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2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF NEVADA

4  
5 UNITED STATES OF AMERICA, )  
6 Plaintiff, ) Criminal Case No.  
7 vs. ) 3:22-cr-00068-ART-CLB  
8 Triston Harris Steinman, ) Friday, July 7, 2023  
9 Defendant. )

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11 TRANSCRIPT OF ORAL ARGUMENT AND EVIDENTIARY HEARING  
12 HONORABLE ANNE R. TRAUM PRESIDING  
13 UNITED STATES DISTRICT COURT  
14  
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16 A P P E A R A N C E S

17 For the Plaintiff: Andrew Keenan  
18 U.S. Attorneys Office - Reno  
19 400 S. Virginia Street, Ste 900  
20 Reno, NV 89501

21 For the Defendant: Sean A. McClelland and  
22 Christopher P. Frey  
23 Federal Public Defenders Office  
24 200 S. Virginia Street, Ste 340  
25 Reno, NV 89401

Official Court Reporter: Donna Prather  
410 S. Virginia Street  
Reno, NV 89501

Proceedings taken by Certified Stenographic Reporter and  
transcribed using Computer-Assisted Translation

1 (Proceedings commenced at 1:37 p.m.)

2 THE CLERK: This is the date and time set for oral  
3 argument and an evidentiary hearing in Case  
4 No. 3:22-cr-00068-ART-CLB. United States of America versus  
5 Triston Harris Steinman.

6 Counsel, please state your appearances for the  
7 record.

8 MR. KEENAN: Good afternoon. Andrew Keenan for the  
9 government.

10 THE COURT: Good afternoon.

11 MR. MCCLELLAND: Sean McClelland for Mr. Steinman  
12 here with Chris Frey at counsel table.

13 THE COURT: Good afternoon to you and to  
14 Mr. Steinman.

15 Okay. We have a couple of motions before us. We  
16 have an evidentiary hearing on the motion to suppress and what  
17 I anticipate will be argument on the motion to dismiss. My  
18 intention was to move forward with the motion to suppress  
19 first, and then I'll give you a little bit of time to wrap  
20 that up, and then we'll move on to the motion to dismiss.

21 So, the government proceeds, I assume.

22 MR. KEENAN: Yes, we're prepared to go forward.

23 THE COURT: Okay. Very good. Go ahead.

24 MR. KEENAN: Well, at this time -- well, as a  
25 preliminary matter, I believe the parties have agreed to

1 stipulate to all of each other's exhibits. So as far as the  
2 government's concerned, at this time I would move to admit  
3 Exhibits 1A, B, and C, and 2 through 8.

4 THE COURT: Okay. And just another small thing, I'm  
5 just looking at the exhibits that I saw from the government.  
6 I noticed and certainly appreciate and anticipate having those  
7 come in as exhibits in support of there being a speeding  
8 violation.

9 MR. KEENAN: Yes.

10 THE COURT: But so I welcome that testimony. I  
11 doubt it would be difficult for me to find that there's a  
12 speeding violation based on the record, so just in terms of  
13 tailoring how much time you spend on that.

14 MR. KEENAN: Yeah, I will not be dwelling on that.

15 THE COURT: Okay. Thank you.

16 MR. KEENAN: At this time the government calls  
17 Trooper William Boyer.

18 THE CLERK: Good afternoon. May I have you raise  
19 your right hand.

20 **WILLIAM BOYER, PLAINTIFF WITNESS, SWORN**

21 THE CLERK: Please state your name for the record.

22 THE WITNESS: William Boyer.

23 THE CLERK: Please spell your first and last name.

24 THE WITNESS: W-i-l-l-i-a-m. Last name B-o-y-e-r.

25 THE CLERK: Thank you.

1 MR. KEENAN: Your Honor, if it's okay, I will sit at  
2 counsel table so I can --

3 THE COURT: Yeah, before you proceed, I just want to  
4 acknowledge that there was a stipulation as to the exhibits  
5 moments ago, so all of those exhibits will be admitted. Thank  
6 you.

7 (Plaintiff's Exhibits 1A B C 2 3 4 5 6 7 8 received.)

8 MR. MCCLELLAND: And Your Honor, we'd similarly move  
9 for the admission of Defense Exhibits 501 through 510.

10 THE COURT: And is there a stipulation on the  
11 defense exhibits?

12 MR. KEENAN: Yes, no objection.

13 THE COURT: Okay. Those will also be admitted.

14 (Defense Exhibits 501 502 503 504 505 506 507 508 509 510  
15 received.)

16 THE COURT: You may proceed, and you're welcome to  
17 sit at counsel table. Thank you.

18 MR. KEENAN: It appears my computer might shut down  
19 in a half an hour, but I will turn it back on when it does.

20 THE COURT: Okay.

21 **DIRECT EXAMINATION**

22 BY MR. KEENAN:

23 Q. Good afternoon. I'm not sure that you did, but can you  
24 please state and spell your name.

25 A. William Boyer. First name W-i-l-l-i-a-m. Last name

1 B-o-y-e-r.

2 Q. Where do you work?

3 A. Nevada State Police Highway Patrol Division in Wells.

4 Q. In what capacity?

5 A. I'm a trooper with the Nevada State Police.

6 Q. And how long have you been with, let's say, NHP, Nevada  
7 Highway Patrol?

8 A. As of current, just approximately five years.

9 Q. And let's say up until August 2022, approximately how  
10 many traffic stops have you made up until that point?

11 A. A few thousand.

12 Q. And approximately how many arrests have you made up to  
13 that point?

14 A. Again, varies between 20 and 30 a year.

15 Q. And by that time it was about four years in?

16 A. Yes.

17 Q. And as part of your job as a trooper with NHP, have you  
18 received any specialized training?

19 A. Yes.

20 Q. Could you explain what some of that was?

21 A. On top of the P.O.S.T. Certified Academy and the Nevada  
22 Highway Patrol Specific Academy, I attended a criminal  
23 interdiction training.

24 Q. P.O.S.T. certified, is that basic training?

25 A. Correct. It's Peace Officer Standards and Training.

1 Q. And as a trooper, where are you currently assigned?

2 A. Wells.

3 Q. Is that where you were also assigned in August 2022?

4 A. Yes.

5 Q. And as a trooper out in Wells in that division, what area  
6 do you patrol?

7 A. I patrol all around the city of Wells, north, east,  
8 south, and west.

9 Q. Some major highways?

10 A. Yeah, a couple of major highways. Interstate Route 80,  
11 and U.S. Highway 93.

12 Q. Now I'm going to direct your attention to August 12,  
13 2022. Were you working on that date?

14 A. Yes.

15 Q. Approximately what time that day were you working?

16 A. I started my shift between 12:00 and 2:00 p.m.

17 Q. And how long are your shifts?

18 A. About approximately ten hours.

19 Q. And were you working in a patrol car?

20 A. Yes.

21 Q. Do you know what patrol car you were in?

22 A. Yeah, Unit Number 19060.

23 Q. And is that number unique to your patrol car --

24 A. It is.

25 Q. -- that day?

1 A. Yes.

2 Q. And were you working alone that day?

3 A. Yes.

4 Q. Were you in uniform?

5 A. Yes.

6 Q. At approximately 3:51 p.m., did you conduct a traffic  
7 stop?

8 A. Yes.

9 Q. What vehicle did you stop?

10 A. A gray BMW 325.

11 Q. And did you come to learn who was driving that vehicle?

12 A. Yes.

13 Q. Who was that?

14 A. Triston Harris Steinman.

15 Q. And was there anyone else in the car?

16 A. No.

17 Q. And do you see the driver of that BMW in the courtroom  
18 today?

19 A. Yes.

20 Q. And -- well, since you do, could you point that  
21 individual out and identify them by a piece of clothing.

22 A. Mr. Steinman is wearing a white button-up shirt sitting  
23 behind the defense desk.

24 MR. KEENAN: Your Honor, let the record reflect the  
25 witness has identified the defendant.

1 THE COURT: Yes, it's noted.

2 BY MR. KEENAN:

3 Q. Now, could you briefly describe the circumstances leading  
4 up to the stop.

5 A. I was traveling northbound on U.S. Highway 93, which I  
6 observed a gray BMW sedan traveling towards my location. I  
7 observed the vehicle -- or a vehicle estimated traveling above  
8 the posted speed limit, which I activated my front radar or my  
9 radar on the front being the opposite direction mode and  
10 verified the vehicle to be traveling 89 miles per hour in a  
11 75 mile per hour speed zone.

12 Q. And have you been certified to use radar?

13 A. Yes.

14 Q. And like you said, the car you were driving was equipped  
15 with radar equipment?

16 A. Yes.

17 Q. And at some point, prior to that day that radar had been  
18 calibrated at some point?

19 A. Yes.

20 Q. And you may have mentioned it, but where exactly was the  
21 defendant stopped on that date?

22 A. Approximately mile marker 56 Elko and U.S. Highway 93.

23 Q. And on Highway 93, where in relation to other cities or  
24 towns is that?

25 A. It's approximately 18 miles south of Wells.



1 Q. Do you patrol that road often?

2 A. Yes.

3 Q. What's the speed limit on that road?

4 A. 70 miles per hour.

5 Q. And are you aware of any speed limits in Nevada that are  
6 over 80 miles per hour?

7 A. No.

8 Q. And after you observed the vehicle and activated your  
9 radar and observed the radar, what did you do next?

10 A. I activated my emergency lights, made a U-turn and  
11 stopped the vehicle to take enforcement action.

12 Q. And I'm going to pull up Exhibit 2 and play it from the  
13 beginning.

14 (Video played.)

15 BY MR. KEENAN:

16 Q. Stopping it at the 30 second mark. Trooper Boyer, is  
17 that in the middle of the frame, that vehicle, is that the BMW  
18 that you stopped?

19 A. Yes.

20 Q. And that was the BMW that your radar indicated was  
21 traveling at 89 miles per hour?

22 A. Yes.

23 MR. KEENAN: I'm going to continue to play it  
24 briefly.

25 (Video played.)

1 MR. KEENAN: I'm stopping it at 1:04 on the dash cam  
2 video.

3 BY MR. KEENAN:

4 Q. Trooper Boyer, what did you observe next?

5 A. I observed movement within the cab of the vehicle.

6 Q. After you had pulled behind it?

7 A. Correct.

8 MR. KEENAN: I'm going to go ahead and continue to  
9 play it briefly.

10 (Video played.)

11 MR. KEENAN: And stopping it at 1:32.

12 BY MR. KEENAN:

13 Q. At this time, do you exit your patrol vehicle?

14 A. Yes.

15 Q. And prior to that, after pulling up and behind the BMW  
16 and before exiting your vehicle, did you observe the  
17 individual in the vehicle moving?

18 A. Yes.

19 Q. And is that shown on your dash cam video?

20 A. Yes.

21 MR. KEENAN: I'm going to pull up Government's  
22 Exhibit 3. And beginning it at the -- well, I'll use the  
23 timestamp on the -- 15:51:23 timestamp on the video.

24 (Video played.)

25 MR. KEENAN: Just stopping briefly at 15:52:12.

1 BY MR. KEENAN:

2 Q. Trooper Boyer, does this body cam video depict your  
3 interaction with the defendant on August 12?

4 A. Yes.

5 MR. KEENAN: I'm going to go ahead and continue  
6 playing it from that timestamp.

7 (Video played.)

8 MR. KEENAN: I'm stopping at 15:52:24.

9 BY MR. KEENAN:

10 Q. Trooper Boyer, at this point what, if anything, did you  
11 observe inside the vehicle?

12 A. I observed a blanket covering what I thought to be items  
13 in the back seat of the vehicle, and I also observed a green  
14 ammunition box in the front right floorboard of the vehicle.

15 Q. And you say the blanket, was the blanket on the actual  
16 seat or did it appear above the actual seat?

17 A. Above.

18 Q. And could you tell what was underneath it?

19 A. No.

20 Q. And the ammo box, could you describe that.

21 A. From my recollection, I think it was a green -- a  
22 general -- just a general ammo box.

23 Q. One you would buy at the store or?

24 A. Yeah, maybe -- yeah, absolutely, correct, one that you  
25 would buy at the store.

1 MR. KEENAN: Okay. I'm going to continue playing it  
2 from 15:52:24.

3 (Video played.)

4 MR. KEENAN: I'm stopping it at 15:53:23, the body  
5 cam.

6 BY MR. KEENAN:

7 Q. What are you doing in your vehicle at this point?

8 A. At this point I'm preparing to run a driver's license  
9 check.

10 Q. And is that what you did?

11 A. Yes.

12 (Video played.)

13 MR. KEENAN: Pausing it at 15:53:40.

14 BY MR. KEENAN:

15 Q. When you run a driver's license check, what does that  
16 entail? What does the results of that check entail?

17 A. It shows whether the subject's license is clear and  
18 valid, if they have any warrants, outstanding warrants or if  
19 they have any protection orders.

20 MR. KEENAN: Okay. I'm going to continue to play  
21 the body cam from 15:53:40.

22 (Video played.)

23 MR. KEENAN: Just pausing at 15:54:26.

24 BY MR. KEENAN:

25 Q. What's going on here?

1 A. I received a phone call from my supervisor.

2 Q. Was it related at all to this traffic stop?

3 A. No.

4 Q. It was about some other assignment?

5 A. Correct.

6 MR. KEENAN: Okay. I'm going to continue playing  
7 the body cam at 15:54:26.

8 (Video played.)

9 MR. KEENAN: I'm stopping at 15:55:16, and I'm going  
10 to fast forward to 15:55:56.

11 BY MR. KEENAN:

12 Q. At some point did you return to Mr. Steinman's vehicle?

13 A. Yes.

14 Q. Why was that?

15 A. I was going to check the VIN number on the subject's  
16 vehicle and make sure it matched the registration that was  
17 provided as well as request the subject's insurance  
18 information.

19 MR. KEENAN: I'm going to play from 15:55:56, the  
20 body cam.

21 (Video played.)

22 MR. KEENAN: Just pausing at 15:58:24.

23 BY MR. KEENAN:

24 Q. Up until this point, had the defendant shown you any  
25 proof of insurance for the car?

1 A. No.

2 MR. KEENAN: I'm going to continue playing at that  
3 timestamp.

4 (Video played.)

5 MR. KEENAN: Just pausing at 15:58:46.

6 BY MR. KEENAN:

7 Q. What are you doing on your computer at this point?

8 A. I'm looking at the vehicle registration in the system and  
9 seeing if I can verify any insurance information attached to  
10 that registration.

11 MR. KEENAN: I'm going to continue playing from that  
12 timestamp.

13 (Video played.)

14 BY MR. KEENAN:

15 Q. So at 15:59:15, what's happening here?

16 A. Mr. Steinman is showing me insurance on his cellular  
17 device.

18 Q. And did you look at that to verify it?

19 A. Yes.

20 MR. KEENAN: Okay. I'm going to continue playing  
21 the body cam.

22 (Video played.)

23 MR. KEENAN: Stopping at 16:00:12.

24 BY MR. KEENAN:

25 Q. What are you doing on your computer now?

1 A. I'm accessing my ticket writer application.

2 Q. How can you tell?

3 A. I see the symbol that is usually there when I log in on  
4 the login screen.

5 MR. KEENAN: Okay. I'm going to continue playing  
6 from that timestamp on the body cam.

7 (Video played.)

8 MR. KEENAN: Stopping at 16:00:36.

9 BY MR. KEENAN:

10 Q. When you're talking about the vents, are you referring to  
11 the air conditioning in your car?

12 A. Yes.

13 MR. KEENAN: Okay. I'm going to continue playing  
14 the body cam.

15 (Video played.)

16 MR. KEENAN: Just pausing at 16:01:22.

17 BY MR. KEENAN:

18 Q. What are you doing on the computer at this point?

19 A. I'm attaching Mr. Steinman's driver's license information  
20 to the call details.

21 MR. KEENAN: I'm going to continue playing the body  
22 cam.

23 (Video played.)

24 MR. KEENAN: Stopping at 16:01:38.

25 ///

1 BY MR. KEENAN:

2 Q. Is there anything you noticed about Mr. Steinman's  
3 physical appearance during -- at this point in the stop?

4 A. Mr. Steinman appeared to be sweating, which I noticed  
5 prior to that point, but at that point I was also taking note.

6 Q. Do you remember if the air conditioning was on in your  
7 car?

8 A. It was.

9 MR. KEENAN: I'm going to continue playing the body  
10 cam at 16:01:38.

11 (Video played.)

12 MR. KEENAN: Stopping at 16:02:14.

13 BY MR. KEENAN:

14 Q. What is a T-26 investigation?

15 A. It's referring to a criminal history check.

16 Q. And you're requesting that from your dispatch?

17 A. Correct.

18 MR. KEENAN: I'm going to continue playing at  
19 16:02:14.

20 (Video played.)

21 MR. KEENAN: Just pausing briefly at 16:03:50.

22 BY MR. KEENAN:

23 Q. Had you completed the traffic citation by this point?

24 A. No.

25 MR. KEENAN: Okay. I'm going to continue playing.



1 (Video played.)

2 MR. KEENAN: I'm pausing at 16:05:07.

3 BY MR. KEENAN:

4 Q. What's on your computer screen at this point?

5 A. That's my ticket writer application.

6 Q. And on the right side where it's not blackened out, is  
7 that a signature line?

8 A. Yes.

9 Q. Is that where you sign the ticket?

10 A. Yes.

11 MR. KEENAN: I'm going to continue playing.

12 (Video played.)

13 MR. KEENAN: I'm pausing at 16:05:23.

14 BY MR. KEENAN:

15 Q. What are you doing on your computer at this point?

16 A. I believe I heard the audible sound that said that  
17 something had attached to my CAD, and I believe at that point  
18 in time is when I received the -- Mr. Steinman's criminal  
19 history and I began to review it.

20 Q. So could you just explain for us how that works with the  
21 request for the criminal history check and how it's delivered  
22 to you, essentially?

23 A. I request a criminal history through dispatch. We can't  
24 run criminal history ourselves. Once they receive the  
25 criminal history, they attach it to the CAD. And then when

1     they attach it to the CAD, I hear the audible tone that said  
2     that something was attached to the CAD. CAD being the call  
3     details.

4     Q.     So you receive like a notification-type thing on your  
5     computer?

6     A.     Yes.

7             MR. KEENAN: I'm going to continue playing from  
8     16:05:23.

9             (Video played.)

10            MR. KEENAN: I'm just going to stop it at 16:06:09.

11     BY MR. KEENAN:

12     Q.     Are you still looking at the criminal history return?

13     A.     Yes.

14     Q.     I'm just going to briefly pull up Exhibit 6, which has  
15     already been admitted.

16             What are we looking at here?

17     A.     These are the returns from the records request that they  
18     attached to the call details.

19     Q.     So is this a printout of what you were looking at on your  
20     screen in your patrol car?

21     A.     Yes.

22             MR. KEENAN: I'm going to return to Exhibit 3,  
23     16:06:09.

24             (Video played.)

25             MR. KEENAN: I'm pausing at 16:06:18.

1 BY MR. KEENAN:

2 Q. What are you communicating with dispatch about?

3 A. Dispatch advised me that they had attached the criminal  
4 history and they were going to basically give me the  
5 information over the radio, but I had advised them that I was  
6 going to look at that myself.

7 Q. And had you already been reviewing it yourself?

8 A. Yes.

9 MR. KEENAN: I'm going to continue playing the body  
10 cam briefly.

11 (Video played.)

12 BY MR. KEENAN:

13 Q. At 16:07:44, are you still scrolling through that  
14 criminal history check?

15 A. Yes.

16 Q. I'm going to -- well, did you scroll through the whole  
17 thing?

18 A. Yes.

19 Q. And did you see items that were listed "felony with a  
20 guilty disposition"?

21 A. Yes.

22 Q. Did you know what any of them were for?

23 A. Not -- there was one of them that was a domestic violence  
24 with a dangerous weapon enhancement, I believe. And then  
25 there was another one, I think it was for a stolen vehicle --

1 or I can't actually remember that one. But I believe there  
2 was a domestic violence one with a deadly weapon enhancement.

3 MR. KEENAN: I'm going to continue playing, briefly.

4 (Video played.)

5 BY MR. KEENAN:

6 Q. At 16:09:03 on the body cam, what are you doing here?

7 A. I return to continue writing the citation.

8 MR. KEENAN: I'm going to continue playing.

9 (Video played.)

10 BY MR. KEENAN:

11 Q. At 16:10:31, what are you doing here?

12 A. I'm signing the block for the citation.

13 MR. KEENAN: Okay. I'm going to continue playing  
14 just briefly.

15 (Video played.)

16 MR. KEENAN: Stopping at 16:11:34.

17 BY MR. KEENAN:

18 Q. What did you just do with what appeared to be the  
19 driver's license?

20 A. I scanned the bar code of his driver's license for the  
21 information for the citation.

22 Q. So does it automatically input into a citation?

23 A. Yes, it auto generates.

24 MR. KEENAN: I'll continue playing at 16:11:34.

25 (Video played.)

1 MR. KEENAN: Stopping at 16:12:04. I'll fast  
2 forward a little.

3 Beginning at 16:13:46.

4 (Video played.)

5 THE COURT: Can I ask a question?

6 MR. KEENAN: Yes.

7 THE COURT: Just because it's a little cumbersome to  
8 go back over this. I just wanted to ask, there was just a  
9 thing that was expired, and then oh, you're good, you're fine.  
10 Could we just clarify what that was.

11 BY MR. KEENAN:

12 Q. What did you look at and confirm was okay?

13 A. After I had told him it was expired, and he had already  
14 told me before, I just had forgotten to remember. But he had  
15 told me that he had his Utah registration, which I verified at  
16 that moment in the system and that it was indeed correct, and  
17 it was valid.

18 THE COURT: Okay.

19 BY MR. KEENAN:

20 Q. So originally you were provided an older Washington  
21 registration, but the car had since been registered in Utah?

22 A. Correct. And during the initial phase of the traffic  
23 stop he did say that he had Utah registration.

24 THE COURT: Okay. Thank you for that clarification.

25 MR. KEENAN: You're welcome.

1 I'll continue at 16:14:55.

2 (Video played.)

3 BY MR. KEENAN:

4 Q. By the time you had asked Mr. Steinman if he'd ever been  
5 in trouble before, had you reviewed his criminal history?

6 A. Yes.

7 MR. KEENAN: I'll continue playing at 16:15:30.

8 (Video played.)

9 MR. KEENAN: Just stopping briefly at 16:16:15.

10 BY MR. KEENAN:

11 Q. Can you tell what you're doing on your computer at this  
12 point?

13 A. I'm still writing the citation at that point. I think  
14 that screen is for the endorsements restrictions.

15 Q. What does that mean?

16 A. Any endorsements restrictions on his driver's license.

17 Q. Okay.

18 (Video played.)

19 MR. KEENAN: Just pausing at 16:19:07, and I'll fast  
20 forward a little.

21 BY MR. KEENAN:

22 Q. At this point are you finishing up the ticket?

23 A. I'm getting pretty close.

24 MR. KEENAN: I'll fast forward to 16:20:16.

25 (Video played.)

1 MR. KEENAN: I'll stop it at 16:20:50.

2 BY MR. KEENAN:

3 Q. What happens next?

4 A. At that point, just for context, I had asked him to  
5 search the vehicle, but I had asked him to step out of the  
6 vehicle and stand by with another officer.

7 Q. After the fact?

8 A. After the fact.

9 Q. And what did you do with the vehicle?

10 A. Excuse me?

11 Q. What did you do with the vehicle?

12 A. I requested it to be tipped off and seized and towed.

13 Q. And at some point, later did you confirm the conviction  
14 you had seen with dispatch?

15 A. I did.

16 Q. Or did you request that they confirm them?

17 A. Yes.

18 Q. I'll pull up quickly Exhibit 4. Is this the call detail?

19 A. Yes.

20 Q. And does it include notes of your communications with  
21 dispatch?

22 A. Yes.

23 Q. And do you know when you asked dispatch to verify the  
24 convictions?

25 A. Can you give me a second to look at it?

1 I don't see it on that page.

2 Q. Could it have been at 16:26?

3 A. Yeah, that's where it is.

4 Q. And did dispatch call you back with --

5 THE COURT: I'm sorry. Can you just pinpoint where  
6 it is so I'm looking at what you're looking at.

7 BY MR. KEENAN:

8 Q. The entry -- are you referring to the entry at 16:26:54?

9 A. Yes, I am.

10 Q. And that says with a typo, "verify those are felony  
11 convictions, not just charges"?

12 A. Yes.

13 Q. And is that a notation that dispatch makes after you make  
14 that request?

15 A. Yes.

16 THE COURT: Thank you.

17 BY MR. KEENAN:

18 Q. And did dispatch call you back with the results of that?

19 A. Yes.

20 MR. KEENAN: I will pull up Exhibit 7 and play it  
21 from the beginning.

22 (Video played.)

23 MR. KEENAN: Stopping it at 1:57.

24 And pulling up briefly Exhibit 6.

25 ///



1 BY MR. KEENAN:

2 Q. On that call you mentioned the domestic violence to  
3 dispatch; is that right?

4 A. Yes.

5 Q. And I'm turning to the -- what's Bates stamped 728 and  
6 729 on the criminal history printout. What's titled "Cycle  
7 Three", is that what you were referring to that you had  
8 observed in your vehicle?

9 A. Where is "Cycle Three", I'm sorry?

10 Q. Right at the very top.

11 A. Okay. Yep, Cycle Three. Charge was assault -- if you  
12 scroll down a bit further, it says domestic violence  
13 enhancement -- or let's see, enhancing factor, domestic  
14 violence, class A felony. Disposition guilty.

15 Q. So when you mentioned domestic violence to dispatch  
16 before they had told you, that was because you had seen that  
17 entry?

18 A. Correct.

19 Q. And you said the car was -- I believe you said the car  
20 was sealed and towed. What did you do after that?

21 A. Once it was towed, I went to the highway patrol  
22 substation and authored a request for a warrant affidavit.

23 Q. And did you submit that to a justice of the peace?

24 A. Yes.

25 Q. And I'll just pull up briefly Exhibit 8.

1 Do you recognize this?

2 A. Yes.

3 Q. What is it?

4 A. It's the request for a warrant, search warrant.

5 Q. For Mr. Steinman's BMW?

6 A. Correct. It says, "Affidavit in support of application  
7 for search warrant."

8 Q. And this is the affidavit that you signed and submitted  
9 to the justice of the peace?

10 A. Can you scroll up a little bit? Sorry.

11 Yes, it is.

12 Q. And was the actual warrant signed?

13 A. Yes.

14 Q. And did you search the BMW pursuant to that warrant?

15 A. Yes.

16 Q. Was that BMW search prior to obtaining that warrant at  
17 all?

18 A. No.

19 Q. And could you just briefly summarize some of the items  
20 that were recovered during the search?

21 A. I believe there were 38 firearms, approximately seven  
22 pounds of marijuana, and some drug paraphernalia, and some  
23 ammo.

24 Q. Now --

25 A. Ammunition.

1 Q. -- just going back to your interaction with Mr. Steinman.

2 At any point was he handcuffed?

3 A. No.

4 Q. Did you ever pull your gun out on him?

5 A. No.

6 Q. Did you ever even frisk him?

7 A. No.

8 Q. When you asked him to have a seat in your car, where did  
9 he sit?

10 A. Front, right, passenger side of my vehicle.

11 Q. And was the passenger -- front passenger door to your  
12 vehicle open at first?

13 A. Yes.

14 Q. And at some point, did you tell the defendant he was  
15 receiving a speeding ticket?

16 A. Yes.

17 Q. And when you were waiting for the tow truck, where was  
18 the defendant?

19 A. He was outside of my vehicle, forward of my vehicle, and  
20 I believe he was right next to, pretty close to his vehicle,  
21 just forward of it.

22 Q. Was he doing anything?

23 A. He was talking on his cellular phone.

24 Q. Was he standing in one place or walking around?

25 A. He was walking around a little bit.

1 Q. And did he ultimately leave?

2 A. Yes.

3 Q. How?

4 A. On foot.

5 Q. Just down the road?

6 A. Walking northbound alongside the road, yes.

7 MR. KEENAN: In the interest of time, I'm not going  
8 to play anymore of the body cam. I know the Court, -- it's  
9 available to the Court, unless there's some portion the Court  
10 would like me to play.

11 THE COURT: No. It would be helpful just to  
12 pinpoint at what point did the tow truck come. How far along  
13 are we when the tow truck comes and then how long did the  
14 defendant stick around?

15 MR. KEENAN: I will open up Exhibit 3.

16 (Video played.)

17 MR. KEENAN: Actually, go to Exhibit 4.

18 BY MR. KEENAN:

19 Q. Just looking at --

20 A. It's on that page.

21 Q. -- Bates stamp 79 on Exhibit 4, do you know about when  
22 the tow truck was requested?

23 A. I don't exactly remember. Let's see, I can -- if you let  
24 me look at it for a minute.

25 I believe it was approximately 16:43:30.

1 Q. And do you know when they took the vehicle?

2 A. Let me look at it real quick.

3 Q. Referring to the bottom -- the very bottom of the Bates  
4 stamp 79.

5 A. Yeah, 17:46:09 hours is when I advised that they had the  
6 vehicle.

7 Q. And when the tow truck ultimately took the vehicle, where  
8 was Mr. Steinman?

9 A. I believe that before the tow truck left with the  
10 vehicle, Mr. Steinman had already left. He was advised that  
11 he was not detained. Once he -- he was advised once I gave  
12 him the citation, he was free to leave. But I also advised  
13 that we'd be giving -- we could give him a ride, a courtesy  
14 ride, to the nearest town.

15 Q. But he declined to ride with anyone?

16 A. I think -- I think ultimately he did ride with another  
17 officer, but not initially he did not.

18 THE COURT: I'm sorry, when was he handed -- when on  
19 here is he handed back his license and the --

20 THE WITNESS: I'd have to review the video, ma'am.

21 THE COURT: Would you have put it in these notes?

22 THE WITNESS: It probably wouldn't have been in the  
23 notes, ma'am. Not in the call details.

24 THE COURT: But the citation is in here? Maybe I  
25 missed it. When he got the citation, is that in here?

1 THE WITNESS: It is on body cam. It's not on the  
2 call details.

3 THE COURT: Okay. That's not something you would  
4 have reported.

5 Okay. Thank you.

6 MR. KEENAN: I have no further questions unless --

7 THE COURT: Very good. Thank you.

8 MR. MCCLELLAND: Starting with the Court, could I  
9 proceed from the lectern, Your Honor, I believe the HDMI cable  
10 transmits sound in a way the defense table doesn't.

11 THE COURT: Absolutely.

12 MR. MCCLELLAND: Thank you, Your Honor.

13 Thank you, Your Honor.

14 And thank you, Trooper Boyer, for being here.

15 **CROSS-EXAMINATION**

16 BY MR. MCCLELLAND:

17 Q. I'm going to ask a couple background questions for you,  
18 Trooper Boyer, and then, of course, ask a couple questions  
19 about this stop on August 12. So by way of background, you  
20 testified you're a Nevada Highway Patrol officer; correct?

21 A. Correct.

22 Q. You're not a federal law enforcement officer; correct?

23 A. No. Correct.

24 Q. Okay. And your daily duties as a Nevada Highway Patrol  
25 officer is to enforce Nevada law; correct?

1 A. Correct.

2 Q. And under Nevada law, as you understand it, having  
3 ammunition is not illegal; correct?

4 A. Correct.

5 Q. And you've been in Wells, Nevada, for how long?

6 A. Approximately, at that point, it was just over four  
7 years, nearly four and a half. I'm not sure, but I think the  
8 warrant said four years, five months. Actually, it was less  
9 than that because I transferred to Wells. So it would have  
10 been at that point approximately two years.

11 Q. Okay. And in your two years in Wells, summers are hot;  
12 right?

13 A. They can be.

14 Q. They can be.

15 And on August 12, 2022, it was about 90 degrees that  
16 day; right?

17 A. I don't know.

18 Q. Okay. You previously testified at a preliminary hearing  
19 in state court in connection with this matter; correct?

20 A. Yes.

21 Q. If I were to tell you that you testified then, about a  
22 month after this stop, that it was 90 degrees out, would you  
23 agree with that?

24 A. Yes.

25 Q. Okay. So you would say it's 90 degrees on August 12,

1 2022.

2 A. I would say I don't know. But if he said, if he threw a  
3 number of 90 degrees, I would agree.

4 Q. Okay. In your experience, someone can be in possession  
5 of ammunition but not firearms as well; correct?

6 A. As far as Nevada Revised Statute is, there is nothing  
7 specific that prevents them from owning ammunition that I know  
8 of, plus firearms.

9 Q. I'm asking, I think, maybe a slightly different factual  
10 question. An individual can have in their possession  
11 ammunition but not firearms.

12 A. Yes.

13 Q. Okay. By the same token, someone can have ammunition in  
14 their car but not a firearm in the car; correct?

15 A. Not usually in my experience, but, yeah, it's possible.

16 Q. All right. Well, we'll go to the stop on August 12,  
17 2022, then and won't try to repeat -- or will try not to  
18 repeat Mr. Keenan's direct examination. But just so we  
19 understand the context, you're driving northward on U.S. 93  
20 when you see a sedan coming in the opposite direction;  
21 correct?

22 A. Yes.

23 Q. Okay. You testified you determined the speed of that  
24 sedan by radar; correct?

25 A. I performed a visual estimate at first and then verified



1 by radar.

2 Q. Okay. And that's an internal radar that you use;  
3 correct?

4 A. The radar is inside the vehicle, yes.

5 Q. Okay. And that's something that you have to activate;  
6 right?

7 A. Yes.

8 Q. Okay. And so you activate that and determine that  
9 Mr. Steinman is speeding, or the sedan is speeding; correct?

10 A. Yes.

11 Q. And then you immediately perform a U-turn and activate  
12 your lights; correct?

13 A. Yes.

14 Q. Okay. What sequence was that? Did you activate your  
15 lights and then perform the U-turn?

16 A. I don't recall. I think I activated my lights before I  
17 made the U-turn.

18 Q. Okay. And you don't do any sort of pacing or anything  
19 after you make the U-turn; correct?

20 A. Correct.

21 Q. Okay. And indeed, quite quickly, the sedan that you're  
22 trying to stop pulls over.

23 A. Yes.

24 Q. And you pull up behind the sedan.

25 A. Yes.

1 Q. And as you pull up behind the sedan, you see that the  
2 sedan has sort of a tinted rear window; right?

3 A. I mean, yeah, it's darker than usual.

4 Q. Right.

5 A. I couldn't tell you if it was tinted or not.

6 Q. Right. So you basically can see silhouettes on the other  
7 side of that window; right?

8 A. I can see through it, yes.

9 Q. I'm asking, you just see silhouettes; correct?

10 A. Yes.

11 Q. Okay. So it's sort of dark figures?

12 A. Yes.

13 Q. Okay. No facial features that you can recognize.

14 A. Yes.

15 Q. Couldn't tell the occupant's hair color, for instance.

16 A. Correct.

17 Q. Couldn't see eyes, anything like that?

18 A. Nope.

19 Q. Okay. So you stop, you get out, you approach the car  
20 from the passenger side; correct?

21 A. At the passenger side, yes.

22 Q. Why do you approach from the passenger side?

23 A. Officer safety usually.

24 Q. Okay. And rather promptly, you tell Mr. Steinman that  
25 you stopped him because your speedometer read 89; correct?

1 A. That's what I said on camera. I was referring to the  
2 actual radar reading.

3 Q. Okay. But the speedometer is different than a radar;  
4 right?

5 A. It is.

6 Q. Yeah. And you didn't gauge the speed of the sedan by  
7 pacing; right?

8 A. Correct.

9 Q. So your speedometer was sort of irrelevant to the radar  
10 determination; is it fair to say?

11 A. Yes.

12 Q. Okay. I think you mentioned that you had your radar  
13 calibrated. When was the last time you had it calibrated?

14 A. I believe it was in May of 2021.

15 Q. Okay. So that's over a year prior to the stop here?

16 A. Yes.

17 Q. Okay. Have you ever had your speedometer calibrated?

18 A. Yes.

19 Q. When was the last time you had that calibrated?

20 A. Prior to the incident, it was May 2021; after that, I  
21 believe it was January 2023.

22 Q. So similarly, about -- well, over a year before the stop  
23 in question here you had your speedometer calibrated?

24 A. Yes.

25 Q. All right. So either way, you tell Mr. Steinman that

1 you're stopping him for speeding; correct?

2 A. Yes.

3 Q. Okay. I guess taking it just one step back. Before you  
4 even approach, not only can't you see his face or facial  
5 features, but you don't see him open the door or anything;  
6 correct?

7 A. Can you repeat that? I'm sorry.

8 Q. Yeah, apologies.

9 Back before you even approach the passenger side  
10 door, do you see Mr. Steinman open any doors to the vehicle?

11 A. No.

12 Q. Okay. Do you see him get out of the front seat and move  
13 into the passenger seat?

14 A. No.

15 Q. Okay. So, you get to the passenger side window,  
16 Mr. Steinman has already rolled down the window for you;  
17 correct?

18 A. Yes.

19 Q. Okay. And when you get there, Mr. Steinman hands you his  
20 license; correct?

21 A. Yes.

22 Q. And, in fact, he already has it out and ready for you?

23 A. I think so, yeah.

24 Q. Yeah. He also hands you his registration; right?

25 A. I think I requested his registration, and upon after

1 which he handed it to me.

2 Q. And Mr. Steinman tells you he's getting a digital copy of  
3 his insurance from his girlfriend; right?

4 A. I don't know how he said that. I think he said, yeah, he  
5 was looking for it somehow.

6 Q. Trying to get a digital copy, specifically; right?

7 A. Yeah, I believe so.

8 Q. How is cell service near Wells? Spotty?

9 A. It depends on your carrier.

10 Q. All right. If you're about 18 miles out of Wells,  
11 sometimes you don't have great cell service; right?

12 A. Depends on your carrier. I have great service out in  
13 Wells.

14 Q. All right. You live in Wells.

15 A. Yes.

16 Q. As you're standing at Mr. Steinman's car's passenger  
17 window, you testified that you spotted an ammunition box;  
18 correct?

19 A. Yes.

20 Q. Okay. Did you ask Mr. Steinman if he had, for instance,  
21 a concealed carry permit or anything like that?

22 A. No.

23 Q. Okay. And I believe in direct testimony in response to  
24 Mr. Keenan's questions, you testified that you saw items under  
25 the blanket in the back seat at this point?

1 A. I'm not sure if I testified to seeing items. I thought  
2 there were items underneath the blanket, yes.

3 Q. Okay. So if you testified that you saw items underneath  
4 the blanket, that would be an incorrect statement?

5 A. I'm not understanding your question. I believe what I  
6 said in Mr. Keenan's examination was that I believed the  
7 blanket was covering items in the back seat.

8 Q. Okay. But you didn't see items under the blanket;  
9 correct?

10 A. No. I didn't see actual items, no.

11 Q. All right. And while you were standing on the passenger  
12 side there, you also didn't see anything that you perceived to  
13 be stolen property; right?

14 A. Not that I could perceive at the time.

15 Q. Right. Nothing you thought was stolen property.

16 A. Correct.

17 Q. Okay. Nothing you thought was a controlled substance.

18 A. Correct.

19 Q. Okay. Nothing you thought was drug paraphernalia.

20 A. I mean, initially, no. Nothing.

21 Q. Nothing you saw standing at the passenger side that  
22 looked like drug paraphernalia to you.

23 A. Correct.

24 Q. Nothing that looked like a firearm to you.

25 A. Correct. Nothing.

1 Q. Nothing that looked like rounds of ammunition.

2 A. Correct. Nothing.

3 Q. Okay. So out the passenger side window you get the  
4 driver's license and registration from Mr. Steinman, and you  
5 take that back to your police SUV; correct?

6 A. Yes.

7 Q. Okay. And you start to run a records check on those  
8 documents?

9 A. Yes.

10 Q. Yeah. And as you're doing so, you get the interdiction  
11 thing call; yes?

12 A. From my supervisor, yes.

13 Q. Right. Who is your supervisor?

14 A. Sergeant Gulsby.

15 Q. Sergeant Gulsby.

16 All right. And what is this interdiction thing?

17 A. It was a special -- it was like a special event, a  
18 special assignment for I believe a week.

19 Q. Okay. Special assignment where?

20 A. Around Wells. In the Wells district.

21 Q. Okay. What sort of special assignment?

22 A. It was an interdiction assignment.

23 Q. Okay. Different from what you usually do in your line of  
24 work?

25 A. Not all too different, no.

1 Q. But special in some way?

2 A. Usually, yes. Yeah, they were bringing their canine  
3 units down.

4 Q. And you testified that the entirety of that call not  
5 related to Mr. Steinman; right?

6 A. Correct.

7 Q. You don't discuss Mr. Steinman's speeding on the call?

8 A. No.

9 Q. Great. You don't mention Mr. Steinman at all on the  
10 call; correct?

11 A. Correct.

12 Q. And Sergeant Gulsby, naturally, doesn't mention  
13 Mr. Steinman either; correct?

14 A. Correct.

15 Q. All right. After that call is then over, you return to  
16 the records check that you were in the middle of performing,  
17 safe to say?

18 A. Yes.

19 Q. And the results of those -- the check -- well, sorry let  
20 me take a step back.

21 That records check involved checking the license,  
22 correct?

23 A. Yes.

24 Q. Okay. Including any potential outstanding warrants  
25 associated with the individual with the license?



1 A. I believe, yeah, absolutely.

2 Q. Yeah?

3 A. Any warrants that he may have had, if he had any, would  
4 have been on that same history check.

5 Q. On the same license check?

6 A. Correct. Sorry.

7 Q. You're also running a registration check at that time,  
8 too; right?

9 A. The registration was already run by dispatch.

10 Q. Okay.

11 A. And I don't think I really viewed it.

12 Q. Okay. And both the license check and the registration  
13 check come back as valid?

14 A. Again, I don't remember -- I don't recall the  
15 registration very well. I was mainly checking Mr. Steinman's  
16 license.

17 Q. Okay. So if -- in your previous testimony at the  
18 preliminary hearing you testified that the registration was  
19 valid out of Utah?

20 A. Inevitably, that's what I found out, yes.

21 Q. Okay. So the registration was valid on the car?

22 A. Yes.

23 Q. And Mr. Steinman's license was similarly clear and valid?

24 A. Yes.

25 Q. All right. And in connection with the preliminary

1 hearing in state court in this matter, you testified that at  
2 this point there was nothing raising your suspicion about  
3 Mr. Steinman; is that correct?

4 A. I don't recall that on the preliminary report or  
5 transcripts.

6 Q. Okay. There should be a binder there for you. If you  
7 wouldn't mind turning to Defendant's Exhibit 510.

8 A. Is it the one down here? Is that the one it is?

9 THE CLERK: It's a black binder.

10 MR. MCCLELLAND: I can also pull it up.

11 THE WITNESS: What page did you want me to turn to?

12 MR. MCCLELLAND: Page 9, please, Deputy Boyer -- or  
13 sorry, Trooper Boyer. Lines 5 through 10.

14 THE WITNESS: Is that in a specific tab?

15 MR. MCCLELLAND: Yeah, it should be Tab 510.  
16 Defendant's Exhibit 510.

17 This exhibit has already been admitted. But just  
18 for the sake of clarity, does this appear to be the transcript  
19 of the preliminary hearing in state court in this matter? You  
20 can look at page 1 of the document, for instance.

21 A. It appears that's what it is, yes.

22 Q. Okay. If you can flip all the way back to page 91 of the  
23 document, that appears to be a court reporter certification --  
24 correct? -- that it's a true and accurate recollection -- or  
25 true and accurate account of the preliminary hearing?

1 A. Yes.

2 Q. Okay. And in this preliminary hearing you were under  
3 oath?

4 A. Yes.

5 Q. Okay. So page 9, starting with line 5 -- well, starting  
6 I guess with line 3, you're asked in this case by the state  
7 court prosecutor here. "Okay. Now after you advised  
8 Mr. Steinman of speed and made these observations, what did  
9 you do next?"

10 To which you respond, "I returned to my patrol  
11 vehicle and requested dispatch provide a records check for  
12 Mr. Steinman."

13 Then you're asked, "Okay. Now without stating  
14 specifically, did anything in that records check continue to  
15 raise your suspicion of the situation?"

16 To which you respond, "Not at that time."

17 A. Correct. Nothing in his records.

18 Q. Okay. So there's, at this point, nothing raising your  
19 suspicion about Mr. Steinman?

20 A. Not at that point in time, it was only his driver's  
21 license check.

22 Q. Okay. And nothing else that's raising your suspicions?

23 A. There were other things and indicators inside the  
24 vehicle, yes. But they were, I think, talking about  
25 specifically the records check itself.

1 Q. But you testified here that nothing was raising your  
2 suspicion at the time -- right? -- in the preliminary hearing  
3 transcript I just read to you.

4 A. In the context of that request, he specifically stated a  
5 records check. And I said, "nothing in the records check." I  
6 was referring to anything in the records check.

7 Q. So after you run this records check, that comes back  
8 clear and valid, you go back to Mr. Steinman's car; right?

9 A. Correct.

10 Q. And this time you go driver's side; right?

11 A. Yes.

12 Q. Okay. And you previously testified that you go passenger  
13 side for officer safety.

14 A. Usually, yes.

15 Q. Okay. This time you approached driver's side.

16 A. Yes.

17 Q. And you confirm that his VIN number, vehicle  
18 identification number, checks out with the registration check  
19 that you had run; right?

20 A. Yes.

21 Q. Okay. And it does check out?

22 A. I mean, it matched the expired registration, yes.

23 Q. And also, ultimately, matches the valid Utah  
24 registration?

25 A. Ultimately, yes. After I had visually verified it was a

1 Utah registration, yes, it checked out.

2 Q. Nothing about the VIN is inconsistent with either of the  
3 registration documents?

4 A. No.

5 Q. Okay. And meanwhile, Mr. Steinman is on the phone  
6 getting insurance information from his girlfriend; right?

7 A. I'm not sure if he was on the phone. I requested his  
8 insurance information when I went to check the VIN, and I  
9 believe that's what he was doing. I'm not exactly sure how he  
10 was doing it.

11 Q. So you hear Mr. Steinman on the phone?

12 A. I was unconcerned about the noises, per se. I was  
13 keeping a visual eye on Mr. Steinman. However, what he was  
14 doing, however he was getting his insurance information, I  
15 couldn't tell you.

16 Q. So you don't know if he's on the phone or not when you're  
17 there inspecting the VIN?

18 A. He said he was getting his insurance information.

19 Q. Okay. Either way, it seems like he's getting his  
20 insurance information to you at this point; right?

21 A. Yeah. Yes.

22 Q. Even so, you order him to get out of his car; right?

23 A. After a while, yes, I did ask him to get out of his car.

24 Q. Okay. And in fact, you ordered him to; right?

25 A. Yes.

1 Q. As he did, and in the moments thereafter, he at one point  
2 raises his arms; right?

3 A. At one point, yes. I had asked him -- I just asked him  
4 if he had anything on him, and he said no. And that's why he  
5 raised his hands.

6 Q. And he raises his arms in such a way his shirt hikes up a  
7 little bit; right?

8 A. Yes.

9 Q. And you can inspect from there, from your position, if  
10 there's anything in his waistband; right?

11 A. Correct.

12 Q. And you don't see anything.

13 A. No.

14 Q. And he's wearing basically just shorts.

15 A. I don't recall. I believe he -- I believe he was wearing  
16 shorts.

17 Q. Okay. We can go to the video if you'd like. He was  
18 wearing shorts.

19 A. Sure. I mean, I can't recall.

20 Q. Okay. But you don't see anything in his waistband in the  
21 shorts or pants that he's wearing?

22 A. No, not in his waistline, I see nothing. No bulges, no  
23 knife clips, nothing.

24 Q. So you're confident he doesn't have any weapons on him?

25 A. I felt fairly confident he didn't have any weapons on his

1 waistband, yes.

2 Q. And you do all this visual searching trying to figure out  
3 if there's bulging, et cetera, to confirm your own officer  
4 safety; right?

5 A. I do it in lieu of a frisk, yes, and I do that for  
6 officer safety.

7 Q. If you felt concerned, you could frisk him; right?

8 A. I mean, usually I would request a frisk. And if  
9 there's -- if I had any suspicion that he had any weapons on  
10 him, then I would frisk.

11 Q. Okay. So the fact that you didn't frisk, safe to say you  
12 didn't have any suspicion of weapons on him?

13 A. Right. After I visually saw the waistband, I didn't have  
14 any suspicion he had any weapons on him.

15 Q. And at no point at any time in the stop do you pat him  
16 down?

17 A. No.

18 Q. And while all this is going on, while you're checking the  
19 VIN, while you're checking him visually, et cetera, you don't  
20 see anything in the car that you perceive to be stolen  
21 property?

22 A. Nothing that I perceived at that moment to be stolen  
23 property.

24 Q. Nothing that looked like stolen property to you?

25 A. Nothing.

1 Q. Nothing that looked like a controlled substance?

2 A. Nothing.

3 Q. Nothing that looked like drug paraphernalia?

4 A. No.

5 Q. Nothing that looked like a firearm?

6 A. No.

7 Q. Nothing that looked like rounds of ammunition?

8 A. No.

9 Q. Okay. And you don't really return to Mr. Steinman's car  
10 before making the decision to seize it; right?

11 A. Correct. Yeah. Once he was in my vehicle, I didn't  
12 return to his vehicle until after, after we began to seize the  
13 vehicle.

14 Q. Right. So this is the last time that you're next to the  
15 car?

16 A. I believe so, yeah.

17 Q. So at no point have you seen anything that looks like  
18 stolen property?

19 A. Nope.

20 Q. Nothing that looks like a controlled substance?

21 A. Nope.

22 Q. Nothing that looks like drug paraphernalia?

23 A. No.

24 Q. Nothing that looks like a firearm?

25 A. No.



1 Q. And nothing that looks like rounds of ammunition?

2 A. No, just the ammo box.

3 Q. But nothing that looks like rounds of ammunition?

4 A. Correct.

5 Q. So you bring Mr. Steinman back to the police SUV and  
6 order him to sit in the front seat of your vehicle; right?

7 A. Yeah, I requested.

8 Q. You're ordering him around at this point. You order him  
9 into the seat; correct?

10 A. I guess that's a fair statement, yeah. I -- yeah, it was  
11 more of a request. I present it as a request to sit in my  
12 front seat.

13 Q. And you didn't have to order him into your police  
14 vehicle; right?

15 A. No, I didn't have to.

16 Q. Yeah. You ordered him there because you wanted to ask  
17 him questions; right?

18 A. Yes.

19 Q. Okay. And rather promptly after getting into the  
20 passenger seat of your police SUV, he provides you a digital  
21 copy of his insurance information; right?

22 A. At some point yes, he did.

23 Q. About a minute after sitting down; right?

24 A. I don't recall. I don't recall the actual timeframe.

25 Q. Not for longer than a minute?

1 A. I don't recall the timeframe, sir.

2 Q. Okay. We can play the video on that if you'd like. Let  
3 me just get a good timestamp for that.

4 So we'll be playing from Defense Exhibit 507, which  
5 I understand to be the same as the Government's exhibit of  
6 Trooper Boyer's body cam, but we've separately submitted them.  
7 I'm just noting for the record it's 507. And this will be  
8 from -- I'll go from the timestamps on the video rather than  
9 the hour marker.

10 This is going to be from 7:40 to about nine minutes.

11 (Video played.)

12 MR. MCCLELLAND: All right. So stopping at 9:01  
13 into the video here.

14 BY MR. MCCLELLAND:

15 Q. This is Mr. Steinman providing you the digital copy of  
16 his insurance; right?

17 A. Yes.

18 Q. That's about a minute after he sits in your vehicle?

19 A. Approximately, yes.

20 Q. Okay. At this point do you need any more documents from  
21 Mr. Steinman to issue a speeding ticket?

22 A. Nope.

23 Q. Okay. But you didn't give him the ticket now; right?

24 A. Not at this point. He wasn't --

25 What was the question? I'm sorry.

1 Q. You don't give him a speeding ticket at this moment;  
2 correct?

3 A. Not in this particular moment, no.

4 Q. Okay. You take another couple of minutes. And as  
5 Mr. Keenan asked you, at some point there's a screen with a  
6 signature line up; correct?

7 A. Yes.

8 Q. Okay. And at that point could you sign the ticket?

9 A. That's the first tab of the ticket, yes.

10 Q. Okay. How many tabs are there?

11 A. I can't recall. Maybe around nine.

12 Q. Okay. And is that first tab the most involved?  
13 Lengthiest?

14 A. No.

15 Q. No.

16 A. Not particularly.

17 Q. Okay. But you could sign that tab and then move on to  
18 the next tabs.

19 A. Yes.

20 Q. Okay. Ultimately, you give him a speeding ticket about  
21 48 minutes after you stop him; correct?

22 A. I don't recall a timeline on that one, sir.

23 Q. Okay. I'll skip ahead to when that appears to happen at  
24 48:10 into Exhibit 507.

25 Starting the play at 48:03.

1 (Video played.)

2 MR. MCCLELLAND: All right. Stopping at 48:45 of  
3 Exhibit 507.

4 BY MR. MCCLELLAND:

5 Q. That's you handing him his citation; correct?

6 A. That, yes.

7 Q. All right. Fair to say, then, 48 minutes into the stop  
8 you give him the citation?

9 A. Yeah. Yes, 48 -- yeah, from the time of the stop to the  
10 time the citation was 48 minutes.

11 Q. Okay. But he still hasn't had all of his paperwork  
12 returned to him at this point; right?

13 A. Can you replay that? I may have given it back. Usually  
14 I give it back at that point in time I give him the citation.

15 Q. Well, here. How about I play from Exhibit 508, which is  
16 Sergeant Marin's body cam returning that information. This  
17 has also been previously admitted. This is Exhibit 508.

18 And just for context, Trooper Boyer, Sergeant Marin  
19 is your boss; correct?

20 A. He's one of them, yes.

21 Q. Okay. And his full name is Sergeant Cruz Marin?

22 A. Yes.

23 Q. All right. And he arrives on scene about half an hour  
24 into the stop?

25 A. I don't recall the timeline.

1 Q. He arrives on scene at some point in this stop. We can  
2 pin down exactly when later.

3 A. Yes.

4 Q. And he assists you in various tasks related to this stop;  
5 right?

6 A. Yes.

7 Q. Okay. And he interacts quite a bit with Mr. Steinman  
8 while you are back in your police SUV?

9 A. I'm sorry, say that again.

10 Q. He interacts with Mr. Steinman at various points while  
11 you're back in the police SUV?

12 A. He may have.

13 Q. Okay. So I'm pulling up Exhibit 508, which, again, is  
14 Sergeant Marin's body cam, but should show what we need here.

15 And I'm going to 1:03:10 into that exhibit which he  
16 arrives on scene about 30 minutes later, so about an hour and  
17 a half into this stop.

18 This is an hour and three minutes.

19 A. Excuse me, sir.

20 Q. Yes, of course.

21 A. It wasn't an hour and a half at the stop.

22 Q. He arrives about half an hour after the stop begins.

23 A. Okay. I thought you said hour and a half. I'm sorry.

24 Q. I'm going in the video to about an hour and a half into  
25 the stop.

1 A. Okay.

2 Q. And I'm starting it at 1:03:05.

3 (Video played.)

4 MR. MCCLELLAND: So I'll pause just for a second.

5 Pausing at 1:03:48 seconds into Sergeant Marin's body cam.

6 BY MR. MCCLELLAND:

7 Q. Sergeant Marin has opened the passenger side door to your  
8 police SUV; correct?

9 A. Yes.

10 Q. Okay. And he picked up something from the police SUV?

11 A. Yes.

12 Q. Could you tell what that was?

13 A. My camera.

14 Q. Okay.

15 MR. MCCLELLAND: I'll continue from here.

16 (Video played.)

17 MR. MCCLELLAND: All right. Pausing at

18 1:04:26 seconds into Sergeant Marin's body cam.

19 BY MR. MCCLELLAND:

20 Q. And the timestamp in the top right corner there, 5:25:26;  
21 is that fair to say, Trooper Boyer?

22 A. Yes.

23 Q. Okay. And you stopped Mr. Steinman about an hour and a  
24 half before this; right? 3:51 --

25 A. More or less. But yeah, pretty close.

1 Q. You testified, I think, 3:51 is when the stop started.

2 A. Oh, yeah, so it would have been over, yeah, absolutely.

3 Q. So over an hour and a half?

4 A. Yeah.

5 Q. And that was Sergeant Marin handing Mr. Steinman  
6 paperwork; correct?

7 A. Yes.

8 Q. Okay. Handing Mr. Steinman his paperwork?

9 A. Yes.

10 Q. All right. I'm going to go back a bit to the  
11 conversations and the investigation that you're running in the  
12 police SUV earlier in the stop.

13 About three minutes after Mr. Steinman gives you his  
14 insurance information, you ask dispatch to run the criminal  
15 history check; right?

16 A. What was the time again, sir?

17 Q. About three minutes after Mr. Steinman provides the  
18 insurance information?

19 A. I don't recall the actual -- the timeline when I  
20 requested the actual criminal history. I think it was  
21 maybe -- yeah, I couldn't recall the actual timeline.

22 Q. So Mr. Steinman provided his insurance information, as  
23 you acknowledged, about nine minutes into the stop?

24 A. Yes.

25 Q. You asked dispatch to run the criminal history

1 investigation about 12 minutes in?

2 A. I would have to see the call logs, but that's pretty  
3 close, I think.

4 Q. I'll go to the -- well, I won't play the exhibit again.  
5 The Court has already seen that sequence.

6 But it's after he's provided the insurance  
7 information.

8 A. Yes.

9 Q. Okay. And you specifically asked to run the criminal  
10 history check because you continued to become more suspicious  
11 of Mr. Steinman; right?

12 A. Yes.

13 Q. Okay. And dispatch ultimately took about five minutes to  
14 get that criminal history check; is it fair to say?

15 A. I don't recall the time how long it took them.

16 Q. Okay. If they got back to you about 16 minutes into the  
17 stop, maybe 17 minutes into the stop, that would be about five  
18 minutes after you requested; right?

19 A. So I can't -- I can't opine to that. I don't know  
20 exactly when it was. But I know that I got the criminal  
21 history before they advised me that I received the criminal  
22 history.

23 Q. Okay. I think you testified that there was a ping on  
24 your computer that notified you that you got the criminal  
25 history.



1 A. Yeah, I think it was like an audible ping, yeah,  
2 something like that. It doesn't really sound like a ping, it  
3 sounds like an audible, somebody falling into water or  
4 something.

5 Q. Something falling into water?

6 A. Yeah, like a drop.

7 Q. Okay. And you start reviewing that criminal history  
8 check shortly after you receive it?

9 A. Yes.

10 Q. And when you're reviewing the criminal history check  
11 returns, you're not filling out the license -- or the  
12 citation; correct?

13 A. Correct.

14 Q. Okay. You're working on investigating the criminal  
15 history not writing the citation?

16 A. Not -- yes.

17 Q. Okay. And the criminal history check that you were  
18 reviewing came back with what you've described as felon  
19 entries; right?

20 A. That's my way of saying, yeah, I observed felonies on his  
21 record.

22 Q. Okay. But they come in as entries; right?

23 A. They're on our -- okay. Can I provide you a little bit  
24 of context to that?

25 Q. Sure.

1 A. An entry is -- it's something in his criminal history  
2 would be an entry. That's how I perceived it or that's how, I  
3 guess, tried to show it. It was an entry on his criminal  
4 history, a felony entry on his criminal history.

5 Q. Okay. And I'll ask you a little bit more about this in a  
6 minute, but you basically later tried to verify these entries;  
7 right?

8 A. Yes.

9 Q. And around the same time that you get the criminal  
10 history check back, you start asking Mr. Steinman about  
11 whether he had felony convictions; right?

12 A. Can you rephrase that question?

13 Q. Around the time that you get the criminal history check  
14 back -- after you get the criminal history check back, I guess  
15 is a better way to say it, you start asking Mr. Steinman  
16 whether he has felony convictions?

17 A. At some point, yes, I did.

18 Q. Okay. And Mr. Steinman ultimately says he doesn't know  
19 if there are felonies on his record; correct?

20 A. Yes.

21 Q. And before you could verify the criminal history check  
22 entries, you tell Mr. Steinman you're seizing the vehicle.

23 A. Correct. I didn't need to verify, that was just an extra  
24 step.

25 Q. But you tell him that before you actually do the

1 verification.

2 A. Say again.

3 Q. You tell him that you're seizing his car before you  
4 actually do the verification.

5 A. Correct.

6 Q. And the language you use is that various factors you tell  
7 him, quote, "kind of gives me a little PC to search your  
8 vehicle."

9 A. That sounds accurate.

10 Q. Okay. And "little PC here" means little probable cause?

11 A. Yes.

12 Q. You then let Mr. Steinman get out of the car; right?

13 A. Yes.

14 Q. Okay. But you tell him to stand by.

15 A. With an officer, yes.

16 Q. Right. And that officer is Sergeant Marin?

17 A. Yes.

18 Q. Okay. While Mr. Steinman was in your SUV, you never tell  
19 him that he has the right to an attorney; right?

20 A. Correct.

21 Q. You never tell him that he's free to leave.

22 A. Correct.

23 Q. You never tell him that he can refuse to answer your  
24 questions.

25 A. Correct.

1 Q. Now I'm going to ask a little bit about this verification  
2 of the criminal history entries investigation.

3 So, after you decide to seize Mr. Steinman's car and  
4 let Mr. Steinman out of the vehicle, you ask dispatch to  
5 verify that the entries had resulted in convictions; right?

6 A. Yes, that was just my way of double checking.

7 Q. Okay. And it turns out that's a good idea because your  
8 dispatch officer tells you that a few of the entries aren't  
9 convictions; right?

10 A. Correct.

11 Q. Indeed, some weren't even charges; right?

12 A. Right. There were entries on there that were -- where  
13 she said were just severities of the charges.

14 Q. Okay. So she tells you, for instance, that the first  
15 entry, taking a vehicle without permission, that wasn't  
16 actually a felony. It was a gross misdemeanor; right?

17 A. She said it was reduced to a gross misdemeanor, yes.

18 Q. So it isn't really even a -- well, it's not a felony  
19 conviction; right?

20 A. Well, that one, no. Not the specific one she's referring  
21 to.

22 Q. And then she told you that another entry about an alleged  
23 drive-by shooting hadn't resulted in any kind of disposition;  
24 right?

25 A. Correct.

1 Q. I'm just going to ask you a little bit about interactions  
2 with Sergeant Marin that we talked about or introduced a  
3 little bit earlier.

4 Around the time that you tell Mr. Steinman that  
5 you're going to seize his vehicle, Sergeant Marin shows up.

6 A. Yes, about that time, approximately. Just a little bit  
7 before, I think, maybe.

8 Q. But you don't talk with Sergeant Marin before deciding to  
9 seize Mr. Steinman's vehicle.

10 A. I guess that's fair to say, yeah.

11 Q. Okay. And again, Sergeant Marin is one of your bosses?

12 A. Yes.

13 Q. Okay. You later talk with Sergeant Marin about your  
14 decision to seize Mr. Steinman's vehicle; right?

15 A. Yes.

16 Q. And at one point you ask Sergeant Marin whether seeing an  
17 ammunition box plus ammunition might be enough for probable  
18 cause; right?

19 A. I'm sorry. Can you rephrase? Can you say that again?

20 Q. Yeah, at one point whether he thinks seeing an ammunition  
21 box in a car plus felony convictions would be enough to give  
22 you probable cause; right?

23 A. I believe I was just bouncing it off of him. I wasn't  
24 asking him that specific question. I think I was just  
25 bouncing it off of him.

1 Q. Well, so you're musing to him about these facts?

2 A. I don't know what that word means. But I was basically,  
3 you know, bouncing it off of him, trying to see what he would  
4 maybe say.

5 Q. Okay. Do you often bounce probable cause questions  
6 against other officers, see what they think?

7 A. Usually the senior ones, yes.

8 Q. Okay. And Sergeant Marin told you in response to that  
9 bouncing off that if Mr. Steinman did not admit to felony  
10 convictions, you'd lack probable cause; right?

11 A. I don't recall that. If that's what he said, that's what  
12 he said, but I don't recall that.

13 Q. I'm just going to play a little bit from 507. I'm going  
14 to play from about 1:10 in, starting at 1:9:58 into  
15 Exhibit 507.

16 (Video played.)

17 BY MR. MCCLELLAND:

18 Q. So I'll pause this briefly. This is Sergeant Marin's  
19 arm; correct, Trooper Boyer?

20 A. Yes.

21 Q. And you're bouncing the ideas off him at this point?

22 A. Yes.

23 MR. MCCLELLAND: Okay. Playing from here, 1:10.

24 (Video played.)

25 MR. MCCLELLAND: All right. I'm stopping that at

1 1:10:28.

2 (Video played.)

3 BY MR. MCCLELLAND:

4 Q. Sergeant Marin says, "As soon as he says no, you're out."

5 A. He's not referring to the felony convictions, but he did  
6 say that specifically.

7 Q. He then follows up that statement by saying, "And he says  
8 he doesn't have felony convictions;" correct?

9 A. I don't know. I guess I missed that.

10 Q. Something to that effect. I'll rewind just a couple  
11 seconds here. This is 1:10:18.

12 (Video played.)

13 BY MR. MCCLELLAND:

14 Q. He told you no; right? That's what he says?

15 A. Yes.

16 Q. In the course of this stop, you also made a couple of  
17 other calls; correct?

18 A. Yes.

19 Q. Okay. You called, for instance, Judge Kenneth Colton of  
20 the Wells Justice Court; correct?

21 A. Yes.

22 Q. Okay. That's the same judge you later applied for a  
23 warrant from; correct?

24 A. Yes.

25 Q. Okay. And Judge Calton is a lay justice of the peace; is

1 that right?

2 A. He's the Wells Township Justice of the Peace.

3 Q. Okay. Do you have familiarity with justices of the peace  
4 in rural Nevada?

5 A. As far as what?

6 Q. Do you know that some of them are lay justices of the  
7 peace?

8 A. I just know him as the judge. I just know he's the  
9 justice of the peace, and he has jurisdiction over the Wells  
10 Justice Court, which is he the only one, minus the pro  
11 tempore, but he is the judge.

12 Q. Okay. But you are aware that some judges in rural  
13 Nevada, specifically, some justices of the peace in rural  
14 Nevada are not legally trained?

15 A. I think I know that, yeah. I would say, yeah, I do know  
16 that.

17 Q. Some aren't admitted to the bar.

18 A. Yeah.

19 Q. Some don't have JDs.

20 A. Don't have degrees, correct.

21 Q. If I were to tell you that Judge Calton of the Wells  
22 Justice Court were a lay justice of the peace, would you argue  
23 with that?

24 A. No.

25 Q. You didn't identify the call to Judge Calton during the



1 stop in your report; right?

2 A. Identify the what?

3 Q. The call to Judge Calton that you made in your report?

4 A. No, I didn't. Well, I believe I did actually. Well, I  
5 don't think I said specifically the call, no. I'd have to  
6 review the report.

7 Q. Okay. Let's review the report then. That's Exhibit 501.

8 And we'll go to the substance of the report, which  
9 starts at USAO Bates stamp 10. This has previously been  
10 admitted as well.

11 I'll make it nice and large for us here.

12 Do you identify the call to Judge Calton in that  
13 first paragraph of this narrative?

14 A. No.

15 Q. Okay. Second paragraph?

16 A. Nope.

17 Q. Okay. Third paragraph?

18 A. No.

19 Q. Okay. That little tiny chunk of the fourth paragraph at  
20 the bottom of USAO 10, any reference to Judge Calton?

21 A. No.

22 Q. Okay. The continuation of that paragraph on the next  
23 page.

24 A. No.

25 Q. Okay. Next paragraph, any reference to Judge Calton

1 call?

2 A. No.

3 Q. Remainder of this page, any reference to the Judge Calton  
4 call?

5 A. No.

6 Q. This first top bit of this page, any reference to the  
7 Judge Calton call?

8 MR. KEENAN: Your Honor, I'm just going to object to  
9 relevance at this point.

10 THE COURT: Overruled.

11 BY MR. MCCLELLAND:

12 Q. Any reference to the Judge Calton call in entries 10  
13 through 16 here on this page?

14 A. No.

15 Q. All right. Following paragraph, any reference to Judge  
16 Calton?

17 A. No.

18 Q. Any reference to Judge Calton in the following paragraph?

19 A. Nope.

20 Q. Any reference to Judge Calton in the next one, the one  
21 starting at "approximately 1619 hours?"

22 A. No.

23 Q. Any reference to Judge Calton in the little chunk of the  
24 paragraph here at the bottom of the page on USAO Bates stamp  
25 12?

1 A. No.

2 Q. Any reference to Judge Calton in the remainder of that  
3 paragraph on Bates stamp 13?

4 A. No.

5 Q. How about the next paragraph, any reference to Judge  
6 Calton?

7 A. No.

8 Q. Okay. The following paragraph there is a reference to  
9 Judge Calton; correct?

10 A. Correct.

11 Q. Okay. And that references Judge Calton that you -- or  
12 that references that you received approval from Judge Calton  
13 on a search warrant at approximately 7:52 p.m.; correct?

14 A. Correct.

15 Q. Okay. Doesn't note that you called Judge Calton at that  
16 point; right?

17 A. Correct.

18 Q. Okay. Just for the sake of completeness, we'll go  
19 through the remainder here and see if there's any other  
20 references to the call.

21 Any references to the call with Judge Calton?

22 A. No, and I'm confident it won't be in there, sir.

23 Q. Okay. So safe to say you didn't identify the call with  
24 Judge Calton in your report?

25 A. Correct.

1 Q. Okay. So on this call with Judge Calton, you talk about  
2 probable cause; right?

3 A. I believe I was discussing it with him, yes.

4 Q. Was there anyone from the District Attorney's office on  
5 that call with Judge Calton?

6 A. No.

7 Q. Anyone from the U.S. Attorneys Office?

8 A. No.

9 Q. Any court reporter?

10 A. I don't know who's on the other line on Judge Calton's  
11 cellular phone, I only know I was speaking to Judge Calton.

12 Q. Okay. So you called him on his cell phone?

13 A. I called the number for Mr. Calton, or Judge Calton.

14 Q. And you understand that to be his cellular phone?

15 A. I don't know. I just called his number.

16 Q. You testified just a second ago you didn't know who was  
17 on the cell phone with Judge Calton?

18 A. Excuse me. I'm sorry for saying that, sir. I don't know  
19 if it was a cell phone, a land line. I just have a number for  
20 Judge Calton, and that's what I called.

21 Q. And you have that saved in your personal phone?

22 A. Yes.

23 Q. Okay. But as far as you could tell, no one else spoke on  
24 that call, aside from you and Judge Calton?

25 A. Correct.

1 Q. Okay. So there's no member of the public defender's  
2 office on that call?

3 A. Correct, that I know of.

4 Q. No court reporter?

5 A. Nope.

6 Q. Why did you have Judge Calton's number?

7 A. I think I got it from another trooper.

8 Q. Okay. What other trooper?

9 A. I don't know. I don't know how I got the number.

10 Q. Is it common for troopers to have Judge Calton's number?

11 A. Yes.

12 Q. Okay. You weren't calling Judge Calton during the stop  
13 to ask for a telephonic search warrant; right?

14 A. Correct.

15 Q. Okay. And, in fact, you couldn't have because there  
16 didn't seem to be a court reporter present; correct?

17 A. I'm sorry, I missed that.

18 Q. Yeah. Have you called a judge for a telephonic search  
19 warrant before?

20 A. Yes, I believe I have.

21 Q. And are you aware that there are procedures for -- for  
22 asking for a telephonic search warrant under Nevada law?

23 A. Yeah. I have not requested a telephonic warrant from  
24 Judge Calton. I believe I requested one from a judge when I  
25 was working in Ely, Nevada.

1 Q. Thank you, Trooper Boyer. Not quite my question. My  
2 question is are you aware that there are procedures for  
3 requesting a telephonic search warrant?

4 A. Yes, though I don't really know what they are. I  
5 couldn't tell you what they are.

6 Q. Okay. So are you aware that there's maybe a particular  
7 Nevada statute on point for asking for telephonic search  
8 warrants?

9 A. I honestly don't know.

10 Q. Okay. Would it surprise you to hear that telephonic  
11 search warrants require, for instance, a court reporter?

12 A. No, it wouldn't surprise me.

13 Q. Okay. Would it surprise you to hear that you would have  
14 to swear an oath to be telling the truth when you're asking  
15 for a telephonic search warrant?

16 A. Yes. No, I'm sorry, it wouldn't surprise me.

17 Q. Wouldn't surprise you.

18 But there was no court reporter present on this  
19 call?

20 A. No.

21 Q. And you didn't swear an oath?

22 A. No.

23 Q. Okay. But you were talking with Judge Calton about  
24 whether you had probable cause; right?

25 A. I don't think I was asking him if I had probable cause at

1 that time. I was asking him if he would entertain a review of  
2 the search warrant application.

3 MR. MCCLELLAND: Okay. I'm going to play a little  
4 bit of that call. And, unfortunately, we only have your side  
5 of the call from the body cam. We don't have Judge Calton's  
6 responses. So I'm going to ask you if you can recall some of  
7 his responses. But first I'll play from the video.

8 Starting about 41:14 into Exhibit 507.

9 (Video played.)

10 MR. MCCLELLAND: Pausing for a second.

11 BY MR. MCCLELLAND:

12 Q. Just to be clear, this is the phone call with  
13 Judge Calton?

14 A. It could be. I would say yes. I called somebody else at  
15 some point in time too.

16 MR. MCCLELLAND: Yeah, I'm going to ask you about  
17 that call as well, but we'll play through the Judge Calton  
18 call first. I'll pause maybe in another 10 seconds to see if  
19 you can confirm that this is the Judge Calton call.

20 (Video played.)

21 THE WITNESS: If I said judge, it is.

22 BY MR. MCCLELLAND:

23 Q. Okay.

24 A. I said judge, yeah.

25 MR. MCCLELLAND: I'll back this up again because it

1 seems like the audio is a smidge delayed. But we'll go back  
2 to -- this is starting from 41:06.

3 (Video played.)

4 BY MR. MCCLELLAND:

5 Q. So that's your call with Judge Calton; right?

6 A. Yes.

7 Q. Okay. And you ask him a number of questions on that  
8 call; right?

9 A. Yes.

10 Q. You ask him for advice on whether you have probable  
11 cause; right?

12 A. I don't think I was asking for advice on probable cause.  
13 I just told him what I had, and I asked him if he would  
14 entertain a review of the search warrant.

15 Q. Okay. And you told him at some point that you don't know  
16 if you have actual probable cause per se; correct?

17 A. Correct. Yeah, I said it's unknown if I have actual  
18 probable cause per se.

19 Q. What does he say about that?

20 A. I don't recall what he said about that. I don't think he  
21 said anything specific about it at all.

22 Q. There's a fairly long pause on your body cam, a series of  
23 fairly long pauses, you don't think he says anything in  
24 particular about probable cause after you mentioned the  
25 probable cause point.



1 A. I honestly can't recall what he said in that moment, if  
2 he said anything.

3 Q. Have you had previous calls with Judge Calton?

4 A. Yes.

5 Q. Okay. Does he usually let you bounce ideas off probable  
6 cause with him?

7 A. I've never discussed probable cause with Judge Calton,  
8 I've just had other conversations.

9 Q. You discussed probable cause with Judge Calton on this  
10 call.

11 A. On this call I was discussing what I had, and I was  
12 asking if he would entertain a review of the search warrant.

13 Q. Is it your typical practice to have ex parte calls with  
14 judges?

15 A. I don't know what ex parte is, but it's --

16 Q. One-on-one calls with judges without attorneys present.

17 A. Is it typical?

18 Q. Yeah.

19 A. It's not typical.

20 Q. Why did you do it now then?

21 A. Nothing told me -- I thought that it was probably a good  
22 idea to ask him if that was a good idea.

23 Q. Why is that?

24 A. I felt that from what I had, I was uncomfortable making  
25 the decision that I had probable cause to search at that point

1 in time and I felt that it was better for him to make that  
2 determination.

3 Q. So you're uncertain if you have probable cause at this  
4 point?

5 A. Yeah, I was unsure.

6 Q. You've already seized his vehicle; right?

7 A. Correct.

8 Q. But you're unsure that you have probable cause.

9 A. Correct.

10 Q. And so you call the judge that's ultimately going to  
11 issue the warrant to figure out if you have it?

12 A. I -- sir, I called him to see if he'd review the search  
13 warrant. That's what I called him for. I called and I told  
14 him exactly what I had. And he -- and I asked him if he'd  
15 entertain a review of the search warrant. So to me, if he's  
16 going to say yes, that means that there's enough for me to  
17 continue to seize the vehicle for the search warrant.

18 Q. During the course of this stop you don't call the DA's  
19 Office?

20 A. No.

21 Q. You don't call the U.S. Attorneys Office.

22 A. No.

23 Q. You call Judge Calton.

24 A. Yes.

25 Q. Later in the call you asked him to provide an e-mail

1 address for you to send the application; correct?

2 A. I think I had an e-mail address on file for him, so I  
3 just wanted to make sure whichever one he said is what I had.

4 Q. So, specifically, you ask him to text you the right  
5 e-mail address; right?

6 A. I might have asked him, yeah. I don't recall. But  
7 that's not exactly what happened. I actually handed him the  
8 warrant in person.

9 Q. Okay. Did he eventually text you about anything?

10 A. No, he didn't text me.

11 Q. Okay. Has he texted you outside of this?

12 A. No, he doesn't text me. We don't -- we're not on a  
13 friendly basis per se. We are not -- we don't really text  
14 between each other for any reason other than work.

15 Q. And when you called him, you didn't speak first with the  
16 judicial assistant or anything; right?

17 A. No, I didn't -- I didn't speak to anybody before I spoke  
18 to him.

19 Q. You just got straight through to Judge Calton.

20 A. Yes.

21 Q. All right. No clerk that you chatted with before?

22 A. Correct. Nothing.

23 Q. Just Judge Calton.

24 Have you talked with Judge Calton since about  
25 probable cause on stops?

1 A. No.

2 Q. This was a sort of one off?

3 A. I don't know what you mean by that. But, yeah, it was a  
4 one-time thing.

5 Q. Okay. You later talk with Sergeant Marin about calling  
6 the judge, and we can play the chunk, but it's safe to say he  
7 seems sort of unfazed. Is it typical practice among NHP  
8 officers to call judges about probable cause?

9 A. I don't know. I don't know if -- I don't really know of  
10 any other troopers that discuss probable cause with other  
11 judges.

12 Q. Okay. Are you aware of Sergeant Marin ever talking about  
13 probable cause with the judge?

14 A. I don't know. No, I don't know.

15 Q. Has Sergeant Marin ever told you I called the judge, and  
16 he thinks we're good to go? Anything like that?

17 A. No, he's never told me that.

18 Q. Okay. But you told Sergeant Marin that after you got off  
19 the phone with the call.

20 A. Yes.

21 Q. That you had spoken with Judge Calton and that you would  
22 then later submit a warrant application.

23 A. Yes.

24 Q. Okay. You also had a couple of calls with an individual,  
25 looks like Kelly Barny; is that right?

1 A. Yes.

2 Q. Ultimately, two calls; correct?

3 A. Yes.

4 Q. Okay. Who is Kelly Barney?

5 A. He's another trooper.

6 Q. Okay. Is he more senior to you?

7 A. Yes.

8 Q. Okay. Do you typically call him for advice?

9 A. Yes.

10 Q. Does he have any sort of supervisory power over you?

11 A. No.

12 Q. But you call him for advice because he's more senior?

13 A. Yes.

14 Q. You didn't note any of those calls with Kelly Barney in

15 your report either, did you?

16 A. No.

17 Q. And those calls with Kelly Barney are also on your

18 personal cell phone; right?

19 A. Yes.

20 Q. And so if we were to play the body cam footage, we'd only

21 get your side of those conversations, safe to say?

22 A. Safe to say.

23 Q. You have Kelly Barney's number in your phone; right?

24 A. Yes.

25 Q. Is Kelly calling you from Kelly's personal cell phone?

1 A. I don't know. Maybe -- yeah, yeah, he was.

2 Q. Okay. The first call that you have with Kelly seems to  
3 happen about an hour and 15 minutes into the stop. It's not  
4 too long, so I think we'll play that as well.

5 THE COURT: Excuse me. Can you just set up to  
6 remind us exactly what exhibit this is on so we have a clean  
7 record to be able to find this. Thank you.

8 MR. MCCLELLAND: Of course, Your Honor.

9 This is Exhibit 507, again, at about an hour and  
10 15 minutes into Exhibit 507.

11 THE COURT: Thank you. And I'm starting it  
12 specifically at 1:15 into 507.

13 (Video played.)

14 BY MR. MCCLELLAND:

15 Q. All right. So that's your first call with Kelly Barney;  
16 right?

17 A. Yes.

18 Q. Okay. And you describe to Kelly various things that you  
19 found suspicious about the stop; right?

20 A. Yes.

21 Q. And at one point you ask -- is it Trooper Barney?

22 A. Yes.

23 Q. You ask Trooper Barney whether you have probable cause;  
24 right?

25 A. I don't think I specifically asked him probable cause. I

1 can't remember.

2 Q. All right.

3 A. I guess I was probably referring to, you know, what he  
4 thought about all of the suspicion I thought I had.

5 Q. You ask him at some point, "Would that give me probable  
6 cause?"

7 A. Oh, I think I said, yeah, I'm not sure if that gives me  
8 probable cause, yeah.

9 Q. What did Kelly say to that?

10 A. I can't -- try not to put words in his mouth. But  
11 basically what he relayed to me or how I perceived it was that  
12 he thought it did but that submitting for the warrant was what  
13 he would do.

14 Q. But, again, you didn't write about this conversation with  
15 Officer Barney, Trooper Barney rather, in your report; right?

16 A. Right, I didn't write about it.

17 Q. So this is you recollecting 11 months after the fact what  
18 he might have said.

19 A. Yes.

20 Q. Towards the end of that call you tell Trooper Barney that  
21 you'd have to look that one up. What were you referring to?

22 A. I don't recall. I honestly cannot recall.

23 Q. Trooper Barney then calls you back a couple minutes later;  
24 right? We'll play that call too.

25 A. Yeah, sure, go ahead.

1 MR. MCCLELLAND: All right. This is Exhibit 507,  
2 starting around 1:23.

3 I'll start at 1:23:48 on Exhibit 507.

4 (Video played.)

5 BY MR. MCCLELLAND:

6 Q. All right. So that's your second call with Trooper  
7 Barny; correct?

8 A. Yes.

9 Q. And this time you're asking for help writing the warrant  
10 application; is that right?

11 A. I think there was one part of it, yeah.

12 Q. Sounds like a couple questions about what to put in the  
13 application, fair to say?

14 A. Generally, yes.

15 Q. Okay. And ultimately, the warrant application you submit  
16 is 503, Defendant's Exhibit 503 in this binder; is that right?

17 A. Sorry. What's that?

18 Q. Ultimately, the warrant application that you submit is  
19 Exhibit 503 in Defendant's Exhibit binder; correct? This has  
20 previously been admitted.

21 A. Yes.

22 Q. That's the warrant application that you type out and  
23 submit to Judge Calton.

24 A. Yes.

25 Q. Okay. And in the course of your call with deputy -- or



1     sorry, Trooper Barny, you ask Trooper Barny if you should say  
2     firearms in the warrant application; right?

3     A.     Yes.

4     Q.     Okay. And you ultimately do put on the first page of the  
5     warrant application that the evidence sought to be found in  
6     constituting evidence that demonstrates a criminal offense is  
7     or may be committed for a prohibited person possessing  
8     firearms; correct?

9     A.     Yes.

10    Q.     So you ended up agreeing with Trooper Barny in the  
11    recommendation of putting firearms.

12    A.     Yes. I was referring to the terminology.

13    Q.     Okay. What did Kelly say about this warrant application  
14    writing process?

15    A.     I don't know. I couldn't even begin to describe what he  
16    said.

17    Q.     Okay. And that's because it's a long time ago?

18    A.     I mean, yeah. I mean, in my perception, basically what  
19    we -- what that phone call was all about was basically the  
20    process.

21    Q.     And this is another call from your personal cell phone to  
22    Trooper Barny's personal cell phone.

23    A.     Yes.

24    Q.     And it's another call that you didn't note in your  
25    report.

1 A. Correct.

2 Q. Okay. And you talk with Trooper Barny about whether you  
3 should put drugs in the warrant application or not.

4 A. I don't recall. I think I was going to do that anyway.

5 Q. You tell Trooper Barny that you don't think there would  
6 be drugs.

7 A. Oh, okay. Yeah. Well, I mean, in my previous experience  
8 it's not just one criminal activity, one type of criminal  
9 activity that you find evidence of. You find evidence of  
10 several.

11 Q. Sure. Thank you, Trooper Boyer. That's slightly  
12 different than what I'm asking. You tell Kelly that you don't  
13 think there would be drugs.

14 A. Not necessarily.

15 Q. You told Trooper Barny that you did not think that there  
16 would be drugs?

17 A. Yes.

18 Q. And, in fact, when you were at Mr. Steinman's vehicle you  
19 had not observed anything you thought to be controlled  
20 substances; correct?

21 A. Correct.

22 Q. And you had not observed anything that you thought might  
23 be drug paraphernalia; correct?

24 A. Correct.

25 Q. And just to round it out, you didn't observe anything

1 that you thought might be stolen property; correct?

2 A. Correct.

3 Q. And nothing that you thought might be rounds of  
4 ammunition; correct?

5 A. Correct.

6 Q. But ultimately, the warrant -- the proposed warrant that  
7 you attach to the warrant application --

8 A. Mm-hmm.

9 Q. -- it's been marked as Defendant's Exhibit 504,  
10 previously admitted by stipulation --

11 A. Mm-hmm.

12 Q. -- ultimately that search warrant requests authorization,  
13 and then Judge Calton signs it, but requests authorization to  
14 look for evidence of records or documents identifying  
15 ownership, control -- ownership/control of the vehicle, stolen  
16 property, controlled substances, paraphernalia, or illicit  
17 firearms which may be found in Mr. Steinman's car; correct?

18 A. Correct.

19 Q. And you eventually submit this proposed search warrant  
20 attached to Defendant's Exhibit 503 which is the application;  
21 correct?

22 A. Correct.

23 Q. And you submit that to Judge Calton.

24 A. Correct.

25 Q. That's the same judge you previously had the call with.

1 A. Yes.

2 Q. Okay. And you said that you personally delivered it to  
3 Judge Calton?

4 A. Yes.

5 Q. Where did you personally deliver it?

6 A. We were in the Wells Justice -- or we were actually at  
7 the NHP substation in Wells that shares the building with  
8 Judge Calton's office.

9 Q. And you personally handed it to Judge Calton?

10 A. Yes.

11 Q. Okay. Not to a judicial assistant?

12 A. No.

13 Q. Not to a clerk?

14 A. Nope.

15 Q. Directly to Judge Calton?

16 A. Directly.

17 MR. MCCLELLAND: Pass the witness, Your Honor.

18 THE COURT: Thank you.

19 I just have a few really quick questions and let me  
20 interject in that way. The government can address follow up  
21 if needed, and then we can do more follow up if needed. One  
22 question I had for you, is I think in your experience you said  
23 I've been doing this for five years, and you arrest 20 to  
24 30 -- make 20 to 30 arrests per year.

25 THE WITNESS: Correct. That's approximate.

1 THE COURT: Okay. And how many tickets do you give  
2 in a year?

3 THE WITNESS: It varies. It's not as many as  
4 traffic stops, ma'am. I would probably say it's about, you  
5 know, maybe half to -- it's about -- if we're talking about a  
6 ratio, it's probably about half.

7 THE COURT: How many traffic stops do you do a year?

8 THE WITNESS: It varies. I think I've stopped, my  
9 first year was 1400. My second year was approximately a  
10 thousand. But usually is more or less a thousand, ma'am.

11 THE COURT: Okay. And then when you say half, a  
12 thousand-plus stops, maybe 500 tickets, is that what you're --

13 THE WITNESS: Correct.

14 THE COURT: Okay. When you stop someone for a  
15 ticket, how long does it usually take to give a citation?

16 THE WITNESS: Just writing the citation, usually a  
17 round figure is 15 minutes.

18 THE COURT: Okay. And when you say 15 minutes,  
19 that's like from the time that the driver is stopped until the  
20 time that the driver is pulling away?

21 THE WITNESS: I guess that would be an accurate --  
22 or yeah, I guess that would be an okay assumption. It's give  
23 or take, ma'am. Usually when I stop the vehicle, depending on  
24 what documents I get and when I get them, kind of depends on  
25 how long the stop takes.

1 THE COURT: Uh-huh. So if someone gives you a valid  
2 driver's license and a valid registration, and you run those  
3 two things --

4 THE WITNESS: Yes.

5 THE COURT: -- how long does that take once you get  
6 back to your car?

7 THE WITNESS: Yeah, also in the course of me asking  
8 for their documents, ma'am, and when I receive them, I usually  
9 immediately return to my vehicle --

10 THE COURT: Mm-hmm.

11 THE WITNESS: -- with those documents.

12 THE COURT: And you submit the driver's license  
13 and -- you -- I think you said, and correct me if I'm wrong, I  
14 think you said the driver's license and the registration are  
15 sort of, like, two separate checks.

16 THE WITNESS: They are.

17 THE COURT: So you run the driver's license.

18 THE WITNESS: We provide the -- right. We provide  
19 the information, the -- sorry, the registration, we provide  
20 that information to dispatch first.

21 THE COURT: Mm-hmm.

22 THE WITNESS: They do that, that's usually  
23 automatic. Sometimes they don't attach it. So if they don't  
24 attach it, then usually I'll run it again and I'll verify it  
25 myself. And then after that I will run the driver's license.

1           THE COURT: And the driver's license, that's a call  
2 or an electronic thing? You're not calling -- you're not  
3 calling dispatch about the driver's license, you're running  
4 it.

5           THE WITNESS: There's two different ways to do it.  
6 Sometimes we call and sometimes we can do it ourselves.  
7 Depending if our loaned out computers have service.

8           THE COURT: Oh, because you sometimes don't have --

9           THE WITNESS: Because sometimes we don't have  
10 service.

11          THE COURT: So what information do you get back,  
12 again, from the driver's license run? Check?

13          THE WITNESS: So we get, obviously, the driver's  
14 license information. We get any wants and warrants --  
15 outstanding wants and warrants. We get possible TPO  
16 violations. We get information that may pertain to the  
17 subject, that may not necessarily pertain to the subject. And  
18 then, yeah, sometimes we will get -- what do you call it? --  
19 we get like a concealed carry permit hit if it's there.

20          THE COURT: Okay. And then do you -- okay. Then  
21 you're waiting for information from -- on the registration.  
22 Okay. So do you routinely run a criminal history check when  
23 you do the driver's license check and the registration check?

24          THE WITNESS: Not routinely.

25          THE COURT: Okay. When do you do it?

1 THE WITNESS: When I have suspicion. It depends on  
2 the indicators that I see. It depends on the responses that I  
3 get.

4 THE COURT: Okay.

5 THE WITNESS: If I get certain things that don't  
6 necessarily either make sense or are not normal to the public  
7 or a normal traffic stop, then I'll run a criminal history.

8 THE COURT: Okay. That's helpful.

9 What -- there was -- so I may be confusing my facts,  
10 so forgive me if that's true, did you -- did the -- did  
11 Mr. Steinman tell you that he was going to St. George.

12 A. He did. I think what you're referring to is there was a  
13 couple times where I did say Arizona, that was my mistake. It  
14 was a mix up.

15 THE COURT: Do you recall when you said that?

16 THE WITNESS: I think when I called -- I think when  
17 I called the judge and when I called Kelly, the trooper,  
18 Trooper Barny, when I was basically establishing the direction  
19 of travel.

20 THE COURT: From.

21 THE WITNESS: From Washington state.

22 THE COURT: To Arizona.

23 THE WITNESS: To St. George, Utah.

24 THE COURT: But you said Arizona.

25 THE WITNESS: Yeah, accidentally.



1 THE COURT: Okay. And then you said that a couple  
2 times, but it's not in the search warrant application.

3 THE WITNESS: Arizona, I don't believe so.

4 THE COURT: Okay.

5 Okay. That's all. Thank you.

6 MR. KEENAN: Just a few follow ups.

7 **REDIRECT EXAMINATION**

8 BY MR. KEENAN:

9 Q. I'll start if I could play Exhibit 3.

10 Just from 16:57:45 because there was some questions  
11 about the conversation with your supervisor.

12 (Video played.)

13 MR. KEENAN: Just stopping at 17:01:10.

14 BY MR. KEENAN:

15 Q. When your supervisor says once he says "no, you're out,"  
16 do you think he's referring to the justice of the peace?

17 A. No, he's referring to consent. He says -- he's referring  
18 to when I asked for consent and he said no, then you're out.  
19 That's what I believe he was referring to.

20 Q. So it means you need to do something else if you want to  
21 search that car?

22 A. Correct. I think that's a very accurate assumption.

23 Q. And there was quite a few questions about the  
24 conversation you had with Judge Calton as well as Barney. And  
25 it's, I think, safe to say now that those conversations

1 weren't documented in your report; right?

2 A. Yeah, they weren't documented.

3 Q. It is documented on your body cam though; right?

4 A. Yes.

5 Q. Would there be any reason for you to indicate those in  
6 your report?

7 A. I didn't see a reason to document those in my report. I  
8 think they were just less than a technicality. They were  
9 trivial phone conversations that didn't -- I mean, did they  
10 affect my decision? Yes. But I had pretty much already  
11 decided to seize the vehicle.

12 Q. And you had -- you said you made that decision, but you  
13 still sought the -- you talked it over with at least three  
14 people on this body cam; correct?

15 A. Yes. Well, two people, I'm sorry. Oh, three people  
16 you're right. Yep.

17 MR. KEENAN: I have no further questions for the  
18 witness.

19 THE COURT: Thank you.

20 Can you just remind me who the three people are? Is  
21 that Judge, Kelly, and Marin -- and Sergeant Marin?

22 MR. KEENAN: That's who I was referring to.

23 THE COURT: Somehow I missed who Hernandez is. Is  
24 there a reference to a Hernandez in here?

25 MR. MCCLELLAND: I understood the body cam to refer

1 to a Hernandez, Your Honor. I also don't know who Hernandez  
2 is.

3 THE COURT: Who is Hernandez?

4 THE WITNESS: Sergeant Hernandez is the sergeant of  
5 the investigative division, ma'am. And I didn't call him. He  
6 was not spoken to prior to issuing a search warrant.

7 MR. KEENAN: We could just play that portion of the  
8 body cam where the name comes up again.

9 Just starting Exhibit 3 at 16:58:50.

10 THE COURT: Thank you.

11 (Video played.)

12 THE WITNESS: Excuse me, sir. In your previous  
13 question where your regarding speaking to George Hernandez, I  
14 can't exactly recall if I spoke to him prior to submitting for  
15 the warrant or after submitting the warrant and searching the  
16 vehicle. I'm sorry, that was -- I don't have that  
17 recollection.

18 THE COURT: Okay. Just, you spoke to him that day,  
19 and you're not sure exactly when you spoke to him.

20 THE WITNESS: Correct.

21 THE COURT: But it was sometime before you had this  
22 conversation with your Sergeant Marin who is standing there.

23 THE WITNESS: Sergeant Hernandez was spoken to after  
24 Sergeant Marin, after I spoke to Sergeant Marin. I spoke to  
25 Judge Calton first, then I spoke to Trooper Kelly Barny

1 second, and then I spoke to -- or at some -- throughout those  
2 conversations, I was speaking with Sergeant Cruz Marin.  
3 Sergeant Hernandez was spoken to off camera.

4 THE COURT: Okay. In this clip, are you speaking to  
5 Marin?

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 MR. KEENAN: I'll just play this maybe just to  
9 clarify.

10 THE COURT: It's -- very brief, yes. Thanks.

11 (Video played.)

12 MR. KEENAN: Well, I didn't hear it that time.

13 BY MR. KEENAN:

14 Q. But is it safe to say that if you had a conversation  
15 during -- at some point during this car stop with Sergeant  
16 Hernandez it would be recorded on the body cam?

17 A. Yes.

18 Is that what you're referring to? If there was a  
19 conversation with Sergeant Hernandez, it would be on the body  
20 cam.

21 Q. If it were in reference to this traffic stop, it would be  
22 recorded between the beginning of this body cam video and what  
23 we just played up to at 17:01:22?

24 A. I'm not exactly understanding your question. But any  
25 conversation with Sergeant Hernandez was not recorded. I did

1 talk to him at some point that night. I can't remember if it  
2 was before or after the warrant was approved. But at some  
3 point I did talk to him just to let him know that I was going  
4 to be searching the vehicle, and that the suspect may still be  
5 inside city limits. I think that's the only thing that I  
6 talked to him about.

7 MR. KEENAN: Nothing further.

8 THE COURT: Okay. Thank you.

9 Defense, anything?

10 MR. MCCLELLAND: Nothing further, Your Honor.

11 THE COURT: Okay. Let me just see -- can I ask,  
12 there's a -- so my notes refer to a conversation with  
13 Hernandez that I also didn't hear the second time, but I'm  
14 certain I heard it the first time, so I'm not sure what  
15 happened there.

16 There was a little -- my notes also refer to  
17 something that you said, like, we usually interdict going  
18 south. It was something along those lines that you said in  
19 that conversation. I just want to get some context about what  
20 you're talking about.

21 THE WITNESS: Oh, yes, ma'am, I'll give you some  
22 context. When it comes to narcotics and really any  
23 interdiction, for the most part a lot of what we get comes  
24 from northbound traffic.

25 THE COURT: Okay.

1           THE WITNESS: But in my training and experience, and  
2 specifically stated in my training and experience from the  
3 class, from specialized advanced training I mean to say, is  
4 that we don't interdict just northbound traffic or eastbound  
5 traffic, we interdict all traffic because, obviously, criminal  
6 activity travels and sometimes the direction doesn't matter.

7           THE COURT: Okay.

8           THE WITNESS: I'm sorry, I guess that wasn't a very  
9 good explanation.

10          THE COURT: So, you're usually interdicting  
11 northbound traffic. He was traveling south.

12          THE WITNESS: I don't -- I wouldn't say I usually  
13 interdict northbound, ma'am.

14          THE COURT: Okay.

15          THE WITNESS: And especially at this point in time  
16 because I was fairly new at the whole process in the first  
17 place, which is why I was interdicting southbound as well.

18          THE COURT: Okay.

19          THE WITNESS: But yes, he was southbound.

20          THE COURT: Okay. And so the term interdict, what  
21 does that refer to?

22          THE WITNESS: It's just looking for criminal  
23 activity that's not readily apparent, ma'am.

24          THE COURT: Any criminal activity?

25          THE WITNESS: Any type of criminal activity.

1 THE COURT: Not usually, like, drug activity?

2 THE WITNESS: I mean, a lot of it is drugs is what  
3 we get out of it. But it's an all crimes approach to  
4 criminal -- to interdiction.

5 THE COURT: Okay.

6 THE WITNESS: So.

7 THE COURT: One other question I failed to ask you  
8 earlier, and I'll, of course, allow for follow up. But have  
9 you got a search warrant before?

10 THE WITNESS: Yes.

11 THE COURT: About how many?

12 THE WITNESS: At this point in time, I think that  
13 was my first search warrant, ma'am.

14 THE COURT: Okay. And have you ever searched a car  
15 without a search warrant?

16 THE WITNESS: For PC, yes, ma'am.

17 THE COURT: Mm-hmm. Do you sometimes get consent?

18 THE WITNESS: Sometimes, yes.

19 THE COURT: And sometimes you don't get consent, but  
20 you have probable cause and so you search the car there and  
21 then without a search warrant.

22 THE WITNESS: Yes.

23 THE COURT: Okay. No further questions. Thank you.

24 MR. MCCLELLAND: No further questions from us  
25 either, Your Honor.

1 THE COURT: Okay.

2 MR. KEENAN: Nor the government.

3 THE COURT: All right. So I want to allow argument.  
4 It may just be that everyone kind of needs a couple minutes  
5 break, like, five minutes. And then I anticipate having  
6 argument and then maybe another break. I'm sorry to keep  
7 going so long, but we have to keep going. So let's just take  
8 like a five-minute break, just a little breather, and then  
9 we'll come right back. And then I'll hear argument first on  
10 the motion to suppress and then on the motion to dismiss.

11 Okay. Thank you.

12 Oh, and you -- thank you so much for your testimony.  
13 And you may step down.

14 THE WITNESS: Thank you, ma'am.

15 (Break taken 4:22 p.m. to 4:38 p.m.)

16 THE CLERK: This is to reflect we're back on record  
17 in 3:22-cr-00068-ART-CLB.

18 THE COURT: Okay. So defense, this is your motion,  
19 so I'll let you begin with the argument and have the last word  
20 after the government. Go ahead.

21 MR. MCCLELLAND: Fantastic. Thank you, Your Honor.  
22 Would you like me to present from the lectern or is seated at  
23 counsel table all right?

24 THE COURT: I would prefer the lectern.

25 MR. MCCLELLAND: All right. I sort of do too.



1 MR. KEENAN: Your Honor, before Mr. McClelland  
2 begins, may I tell the witness that he can go?

3 THE COURT: Oh, please. Yes, that's fine.

4 MR. MCCLELLAND: Well, thank you, Your Honor.

5 So, naturally, there are a number of issues with the  
6 traffic stop and follow-on investigation in this case. But  
7 I'll start with what I think is the easiest and simplest  
8 resolution which is warrant overbreadth. There's no dispute  
9 that the majority of the categories identified in the warrant  
10 there is no probable cause for. And there's good reason for  
11 that, because Trooper Boyer, as he testified today, had never  
12 seen stolen property, didn't see anything that he thought  
13 might be a controlled substance, didn't see anything he  
14 thought might be drug paraphernalia, didn't see anything that  
15 he thought might be individual rounds of ammunition, didn't  
16 see anything that he thought might be firearms.

17 So the fact that the warrant purports to authorize a  
18 search for documentation with respect to the ownership and  
19 control of the vehicle, stolen property, controlled  
20 substances, paraphernalia, or illicit firearms, necessarily  
21 makes the warrant defective.

22 The government, again, concedes as much as that at  
23 least three of those five categories there is no probable  
24 cause supporting, that the majority of those categories are  
25 unsupported in the search warrant tends to suggest that the

1 warrant is overbroad, and we think, then, the warrant  
2 overbreadth issue is pretty handily survived *Spilotro*.

3 Now the government in its response briefing raises  
4 in a footnote basically an argument about severance and the  
5 ability to sever, I take it, the firearms category from the  
6 warrant from all the other categories in the warrant.

7 A couple reasons that is an ineffective argument  
8 even if considered from the footnote, one, as in *Spilotro*, the  
9 illicit firearms category is simply lumped into all of the  
10 other categories identified in the warrant and so can't be  
11 severed for that reason. And then beyond that, naturally,  
12 there's no evidence of firearms presented to Trooper Boyer.  
13 Prior to seeking the warrant, he only observed an ammunition  
14 box. And as I think we lay out pretty detailed in our  
15 briefing, the presence of an ammunition box doesn't imply  
16 firearms. And indeed, Trooper Boyer acknowledged you can have  
17 ammunition in a car but not firearms.

18 THE COURT: Can I just stop you there to clarify?

19 MR. MCCLELLAND: Yeah.

20 THE COURT: So that argument basically is if you  
21 have this list of things and you actually do sever the things  
22 that the government would want to sever, what you're left with  
23 is just the firearms. And are you saying there's no probable  
24 cause for that?

25 MR. MCCLELLAND: Well, so I'm saying I think two

1 things, Your Honor. One is I take that to be the government's  
2 severance argument is that, ah, just ignore that there are, in  
3 the government's view, at least three of the five categories  
4 without probable cause. You can sustain it on the warrant --  
5 or on the firearms identification in the warrant alone. And  
6 the response to that is, well, the firearms category, even if  
7 there is probable cause for it, and we contest that --

8 THE COURT: Mm-hmm.

9 MR. MCCLELLAND: -- but even if there is probable  
10 cause for illicit firearms, the warrant simply lumps illicit  
11 firearms in together with all of the other categories that the  
12 government concedes there's no probable cause for. And under  
13 *Spilotro*, the lumping together means that you can't perform  
14 the severance analysis. By the same token, it destroys good  
15 faith reliance on the warrant, because you can't have good  
16 faith reliance on a facially overbroad warrant.

17 THE COURT: Okay.

18 MR. MCCLELLAND: I'll address one other flavor of  
19 the good faith reliance argument that the government raises.  
20 So naturally, the government raises the good faith reliance  
21 argument, but there are exceptions to good faith reliance, one  
22 of which, as I just mentioned, is facial overbreadth can't be  
23 relied on in good faith. But the second is in absence of a  
24 neutral magistrate approving the search warrant. And I think  
25 the facts developed during the evidentiary hearing today

1 strongly suggest that there is a neutral magistrate problem  
2 that the government needs to surmount as well. I don't think  
3 it's any innovation to say that it's highly unusual for a  
4 police officer to call ex parte any sort of judicial officer.

5 THE COURT: Can I just stop you on that.

6 MR. MCCLELLAND: Yes, Your Honor.

7 THE COURT: Because I think what you're saying, in a  
8 sense, every search warrant application is ex parte --  
9 right? -- because it's a one-sided application process where  
10 it's just the person who is seeking the warrant or whoever is  
11 supporting that person, like, they're on -- you know, law  
12 enforcement side or DA or whatever. That's always a one-sided  
13 operation where there's no one else involved from a defense  
14 perspective; right? So, can you just clarify what you mean by  
15 it's off the record is what we heard, but maybe you can just  
16 clarify.

17 MR. MCCLELLAND: Yes, Your Honor. And if we were  
18 dealing with a situation in which Trooper Boyer just submitted  
19 a warrant application, naturally, I don't think we would have  
20 a neutral magistrate problem at issue with the good faith  
21 reliance argument. We have the facial overbreadth argument,  
22 but we wouldn't have the neutral magistrate one.

23 The issue I think with Trooper Boyer's  
24 communications here is not that he submitted an application,  
25 that's, as the Court identifies, fairly routine. What I don't

1 think is routine is asking the Court effectively for an  
2 advisory opinion prior to the application. And there is, I  
3 mean, all sorts of, in the federal system, like Article III  
4 sort of concerns about issuing advisory opinions period. Full  
5 stop. But even in this sort of ad hoc justice of the peace  
6 setting, the notion that an officer would go and basically run  
7 a theory by the judicial officer, in this case a lay justice  
8 of the peace, to see, you know, basically test out the theory  
9 of probable cause prior to submitting an on-the-record warrant  
10 application, I think raises at the least serious neutral  
11 magistrate concerns.

12 And that's, you know, not to question -- of course,  
13 you know, Trooper Boyer it sounds like was presented with his  
14 first search warrant situation. Doesn't totally know what to  
15 do. And so his mind, it sounds like, goes first to, well, I'm  
16 going to call the judge who issues the search warrant.

17 But even if that's understandable from Trooper  
18 Boyer's internal perspective, it's troubling, I think, from a  
19 neutral magistrate perspective because the judge is involving  
20 himself in these proceedings in a way that's unusual.

21 But even setting aside the neutral magistrate  
22 problem, which, you know, we think the government will have a  
23 challenging time grappling with, the facial overbreadth of the  
24 warrant dooms the warrant. And that's, in my view, probably  
25 the cleanest way to resolve the myriad problems at issue in

1 this motion to suppress that whatever else happened here,  
2 there is a facially overbroad warrant that the government  
3 concedes is at least 60 percent deficient, and that the  
4 remaining categories there can't be severed and therefore  
5 can't be relied on in good faith.

6 I'll try and walk through the remaining categories  
7 as quickly as I can. I think the briefing on them was quite  
8 thorough, and I'm cognizant of time, but I do just want to hit  
9 a couple of points that are relevant, and I think were further  
10 developed in the course of the evidentiary hearing. So I'll  
11 start sequentially with the initial stop and the justification  
12 for the initial stop, namely, the speeding radar gun. I think  
13 through the course of testimony as compared to the body cam,  
14 there's actually a bit of ambiguity there. The trooper  
15 testified that he used a radar gun but then immediately tells  
16 Mr. Steinman in the moment that he engaged by speedometer.  
17 But as the officer testified as well, he never actually gauged  
18 speed by using pacing, and so it's unclear I think from the  
19 record exactly how Trooper Boyer determines that Mr. Steinman  
20 is speeding, an issue --

21 THE COURT: So it would be your position that -- on  
22 your client's statements about -- your client's admissions of  
23 speeding you would say don't count for some other reason?

24 MR. MCCLELLAND: Yeah, so Mr. Steinman's statements  
25 about going whatever speed --

1 THE COURT: Yeah.

2 MR. MCCLELLAND: -- he was going don't count because  
3 the stop needs to be justified at its inception --

4 THE COURT: Okay.

5 MR. MCCLELLAND: -- and the government needs to  
6 demonstrate that Trooper Boyer had at least reasonable  
7 suspicion to perform the traffic stop.

8 Even setting that issue aside whether the initial  
9 stop is justified, the prolongation I think became even  
10 clearer after the course of this evidentiary hearing that the  
11 prolongation is a problem.

12 So a couple of facts that I think came out through  
13 Trooper Boyer's testimony that are relevant on that issue. In  
14 response to this Court's questioning, for instance, he  
15 testified that he doesn't run criminal history checks as a  
16 routine part of his stops. Rather, he only runs them when he  
17 thinks he has additional suspicion to run the criminal history  
18 stop. So I think that takes us firmly out of *Hylton/Taylor*  
19 world and squarely into *Gorman, Evans, Rodriguez* world,  
20 whereby Trooper Boyer's own testimony, this is a new,  
21 unrelated investigation that he thinks he needs to justify  
22 with reasonable suspicion. This isn't something that he sits  
23 down, runs the driver's license check, runs the registration  
24 check, runs the criminal history check. He runs the criminal  
25 history check independently.

1           And indeed, a couple of other points about that  
2 driver's license check I think bear on this question too. So  
3 to the extent that the government argues that you need to run  
4 the criminal history check to ensure officer safety, it's  
5 clear from Trooper Boyer's testimony that, in fact, the  
6 driver's license check reveals basically all you need to know  
7 about officer safety, namely, if there's outstanding wants or  
8 warrants with respect to this particular driver.

9           Additional factors that similarly shore up officer  
10 safety before the criminal history check was run here, Trooper  
11 Boyer visually inspected Mr. Steinman, insured that  
12 Mr. Steinman had no firearms or weapons of any sort in his  
13 waistband, no bulges on his pants, nothing indicating a  
14 weapon, and indeed Trooper Boyer was so confident in that  
15 assessment that he didn't pat down Mr. Steinman, and, as the  
16 video shows, had Mr. Steinman sit in the front passenger seat  
17 of his car without taking any, really, any additional  
18 precautions.

19           In line with Trooper Boyer's statements with respect  
20 to running the criminal history check, the record now, I  
21 think, is also quite clear that he runs the criminal history  
22 check definitively after he has every single document he needs  
23 to finish the speeding ticket. He does that and further  
24 reinforces that this is a new, unrelated investigation.

25           So, naturally, I suspect Mr. Keenan will rely



1 heavily on *Hylton* and *Taylor*, but the fact that this is a new  
2 criminal history check run, by the trooper's own admission,  
3 because he thought he had more suspicious stuff, that takes us  
4 firmly out of that world.

5 Moving on to the warrantless seizure argument. Here  
6 again, many of the same factors.

7 Oh, sorry, one second. One additional stuff -- a  
8 couple additional points on prolongation. So it's clear that  
9 this criminal history check is run outside the admission of  
10 the initial traffic stop. And just to wrap up the  
11 prolongation discussion, it, therefore, needed to be supported  
12 by reasonable suspicion, as Trooper Boyer recognized.

13 But really at the point he decides to run the  
14 criminal history stop, he doesn't have, well, really anything  
15 of the sort. The government's briefing relies on just a  
16 subset of factors, I think it's five factors that we address  
17 fairly in depth in -- well, both our opening brief and our  
18 reply brief. But just to walk through them really quickly,  
19 the government cites, for instance, purported excessive  
20 movement after the stop began. I think the testimony reveals  
21 that it was actually fairly hard to see what Mr. Steinman was  
22 doing. It was a tinted window. Trooper Boyer couldn't make  
23 out, for instance, facial features, anything other than dark  
24 silhouettes. And even if there was some degree of movement in  
25 the vehicle, and I think the body cam fairly shows that

1 there's something, but you can't quite tell what, that doesn't  
2 suggest that Mr. Steinman is engaged in anything criminal. It  
3 suggests that he's just been pulled over and is moving.

4 And indeed, it turns out that when Trooper Boyer  
5 shows up at the car, there's a pretty obvious explanation for  
6 the potential movement, which was Mr. Steinman had his ID  
7 ready and provided that directly to Trooper Boyer.

8 The second point that the government relies on is  
9 the presence of the ammunition box. But as I think cases like  
10 *United States v. Nora* make fairly clear, the presence of an  
11 ammunition box can't daisy chain into an assumption that  
12 there's anything more in the vehicle. And indeed, whatever  
13 the status of possession of ammunition is under federal law --  
14 and I know we'll have a brewing discussion in a minute -- but  
15 whatever the legality of possessing ammunition is under  
16 federal law, Trooper Boyer was unequivocal, not a crime under  
17 state law. And that's a problem for a whole host of reasons,  
18 some of which I'll get into in the warrantless seizure  
19 context, but the basic point is he's not tasked with enforcing  
20 federal law. He needs to premise things that he thinks is  
21 suspicious on state law, otherwise cases like *U.S. Currency*  
22 and the case out of the Northern District of California that  
23 we supplied -- that we cite in our reply briefing, well, those  
24 cases wouldn't make any sense; right? The rules in those  
25 cases provide that you need to premise any search on purported

1 single violations. So they can't provide reasonable suspicion  
2 or, as I'll discuss in a minute, probable cause for the  
3 warrantless seizure. Okay. That's the second point with  
4 respect to reasonable suspicion that the government relies on.

5 The third point that having a blanket in the back  
6 seat, I think there was also some inconsistent testimony from  
7 Trooper Boyer on this. In response to Mr. Keenan's questions  
8 Trooper Boyer says that he could see items under the blanket.  
9 But it's fairly clear from his report and his testimony on  
10 cross-examination, as makes sense when you have a blanket, you  
11 can't actually see the items that are underneath the blanket.  
12 And indeed, the presence of a blanket alone means you have a  
13 blanket in a car not that you are hiding things.

14 And indeed, even if there was some sort of hiding  
15 problem at issue with the blanket in the car, I think there's  
16 also a fairly innocuous explanation to that, which is, as  
17 Mr. Steinman repeatedly told Trooper Boyer, he's moving.  
18 Makes sense to put a blanket over items in a car that you are  
19 moving even if they are not innocuous items, you don't want  
20 burglars breaking in and stealing your possessions.

21 The fourth point that the government relies on for  
22 both the reasonable suspicion and, I take it, the probable  
23 cause analysis is that Trooper Boyer found it suspicious that  
24 Mr. Steinman asked why he was being ordered out of his car. I  
25 think the body cam and testimony is fairly clear on that.

1 Mr. Steinman asked, as I think it's his right to do, why he's  
2 being ordered out of the car and then promptly complied with  
3 it. He didn't resist, other than ask the source of authority,  
4 which Trooper Boyer ultimately supplied was *Pennsylvania v.*  
5 *Mimms*, but told him case law in the moment, and even that sort  
6 of vague implication of unspecified case law was enough for  
7 Mr. Steinman to say, okay, I accept your authority and step  
8 out of the car.

9 And then fifth and finally, the government relies on  
10 the purported sweating and purported nervousness of  
11 Mr. Steinman in response to being pulled over in August in  
12 Wells, Nevada. I mean, a couple of points on that is Trooper  
13 Boyer confirmed it's hot in Wells, Nevada. Indeed, the body  
14 cam shows Trooper Boyer and Sergeant Marin wearing  
15 short-sleeved shirts. Maybe they are acclimated well to the  
16 climate of Wells, Nevada. But as someone traveling from  
17 Washington state, then it makes pretty clear sense that  
18 someone might be sweating in the middle of August in Wells,  
19 Nevada.

20 And indeed, it's actually kind of hard from the body  
21 cam to tell if there are -- there is sweating. But, you know,  
22 we credit the testimony that someone might be sweating in  
23 August Nevada -- sorry, in Wells, Nevada, in the middle of  
24 August.

25 And then beyond that, I think the body cam is quite

1 clear that Mr. Steinman is quite composed. He doesn't use any  
2 profanity, I think as far as the body cam goes, until after  
3 being put into the SUV and being asked fairly substantial  
4 questions. While he's being ordered about prior to that, he's  
5 quite compliant. And indeed, the -- in the preliminary  
6 hearing testimony that's been admitted into evidence, Trooper  
7 Boyer describes him as very compliant in response to initial  
8 questioning.

9 But even if we are to accept the nervousness  
10 argument that the government raises and Trooper Boyer  
11 purported to identify, nervousness doesn't suggest criminal  
12 activity. I think that's pretty squarely resolved by  
13 *Chavez-Valenzuela* that we cite in our briefing.

14 All told then, we're sort of in a situation where  
15 individually all the factors are zeros, and so, collectively,  
16 à la *United States v. Thomas*, a sum of zeroes is zero. So  
17 even viewed in their totality, not enough for reasonable  
18 suspicion let alone probable cause.

19 So I said that was going to be a brief discussion of  
20 the prolongation reasonable suspicion analysis, but I think  
21 that feeds very well into the warrantless seizure, because I  
22 take the government to argue basically the same factors as if  
23 they now provide probable cause. But if they can't provide  
24 reasonable suspicion, they also don't provide probable cause.

25 In our briefing, I think we get into a bit of a

1 sparring match with respect to authorization, the search for  
2 the federal law stuff. I think that's all fairly squared away  
3 today that Trooper Boyer didn't perceive himself to be doing  
4 any of that. He didn't apply for a federal search warrant.  
5 There's no indication whatsoever that he's looking for federal  
6 crimes in the course of this stop. So we're squarely in *U.S.*  
7 *Currency* territory, and that's specifically for the purposes  
8 of the record, *United States v. \$186,416 of U.S. Currency*.  
9 That's the world that we're governed by, and so he can't sort  
10 of bootstrap his way back into a proper search even though  
11 state law didn't let him perform it.

12           Beyond that, the next issue, of course, is the  
13 search warrant itself. Went into some detail earlier on in my  
14 presentation here about the warrant and the lack of both  
15 probable cause within the warrant and then the warrant's  
16 overbreadth and the failure to sever, and the inability to  
17 rely on good faith on it, so I won't rehash those arguments  
18 again. But at bottom, this case is pretty squarely within  
19 *Spilotro* world on the warrant. Just to note again, and I  
20 think if the Court's looking for, you know, the easiest way to  
21 write a 3-page order on this, I think the warrant requirement  
22 issue and the overbreadth issue is probably the simplest,  
23 cleanest way to do so.

24           Finally, there's a *Miranda* issue that we also raised  
25 in our briefing. I think the testimony today further confirms

1 that Trooper Boyer's interaction with Mr. Steinman was in the  
2 form of orders and involved fairly substantial detention. I  
3 should note at this point that the government only disputes  
4 the custodial prong of the *Miranda* argument. Doesn't dispute  
5 that this was an interrogation, for good reason. All of the  
6 questions that Trooper Boyer was asking Mr. Steinman in the  
7 course of, specifically, the SUV discussion, but, more  
8 broadly, were designed to illicit incriminating responses. So  
9 this is an interrogation. The question is whether it's  
10 custodial. And the bringing into the car, the requiring to  
11 sit in the car for a fairly substantial period of time, even  
12 if the car door is open, he's still under compulsion by the  
13 officer to be in a place that he doesn't want to be.

14 THE COURT: So in your -- just to clarify, when does  
15 the custody start, in your opinion, on the timeline? Does it  
16 start when he's ordered out? Or, I guess, does it start when  
17 the interrogation and custody coincide in the car? What  
18 changes? Can you just pinpoint that?

19 MR. MCCLELLAND: Yeah, so, ultimately, I'm not sure  
20 it entirely matters, but I think the custody likely starts at  
21 the ordering out of the car. And it's certainly at play with  
22 the ordering in the front passenger seat.

23 I say it doesn't totally matter because there wasn't  
24 a substantial amount of questioning between the ordering out  
25 of the car and the ordering to sit in the front passenger

1 seat. Most of that was Mr. Steinman confirming by raising his  
2 arms and showing his waistband that he didn't have any weapons  
3 on him. And the problematic, from our viewpoint of the  
4 interrogation, is all in the SUV about, you know, felony  
5 convictions and such. Certainly by the time that he's in the  
6 SUV, it's our view that he's in custody. And we think  
7 actually that custody extends past any leaving the SUV because  
8 he's ordered to stand by in, safe to stay, a fairly  
9 inhospitable situation. 18 miles I think Trooper Boyer  
10 testified from the metropolis of Wells, Nevada, in the middle  
11 of August in the desert while he has his property seized from  
12 him. And indeed, he's deprived of his paperwork up until  
13 about an hour and a half into the stop.

14 Naturally, if someone has the key documentation that  
15 you need to go about your daily life, to get, for instance, a  
16 plane flight out of Wells, a reasonable person wouldn't feel  
17 free to leave in that sort of situation. So Mr. Steinman  
18 isn't free to leave until he, in fact, leaves by walking down  
19 the road after he's received his documentation back from the  
20 officers.

21 THE COURT: Okay. So on that point, just on that  
22 little point --

23 MR. MCCLELLAND: Mm-hmm.

24 THE COURT: -- that -- the case law you're referring  
25 to that as sort of like the -- I think it's *Florida v. Royer*,



1 but is there a Ninth Circuit case that sort of is -- you're  
2 hanging your hat on for *Miranda* on the custody point? That's  
3 one question. And if you want to address that when you come  
4 back. And then just the upshot of that would be the exclusion  
5 of his statements in the car --

6 MR. MCCLELLAND: That's correct.

7 THE COURT: -- is that your position?

8 MR. MCCLELLAND: That's --

9 THE COURT: If there is a *Miranda* violation, then  
10 the consequence of that is that the incriminating answers to  
11 questions about criminal history would be excluded.

12 MR. MCCLELLAND: Yeah. So I think a couple of  
13 responses to that, Your Honor. One, with respect to custodial  
14 analysis in *Miranda*, I mean, I think you're right, *Florida v.*  
15 *Royer* is the landmark supreme court case that we're invoking  
16 there. *Rhode Island v. Innis*, also we cite in our briefing,  
17 and *Stansbury v. California* -- well, *Rhode Island v. Innis* for  
18 the interrogation chunk, and then *Stansbury v. California* for  
19 the custodial chunk. More broadly, some cases are  
20 *United States v. Craighead* and *United States v. Kim* I think  
21 are decent examples. They deal with a somewhat different  
22 factual scenario of in-home -- custodial in-home  
23 interrogation, but I think the same analysis about freedom to  
24 leave and the like is probably applicable to this roadside  
25 bit.

1           And I'll acknowledge, we didn't brief *Craighead* or  
2     *Kim* in our briefing, but we'd be happy to provide a more  
3     detailed discussion if the Court's curious.

4           THE COURT:   Okay.

5           MR. MCCLELLAND:   And then with respect to what would  
6     be suppressed with respect to the *Miranda* violation.   So the  
7     Court's correct, we would be seeking to suppress  
8     Mr. Steinman's statements during the custodial interrogation  
9     in the SUV.   And as a consequence, the decision to seize the  
10    vehicle.   Because by the time that Trooper Boyer seizes the  
11    vehicle, the only possible basis for him to suspect that  
12    ammunition or firearms or any sort of contraband in the  
13    vehicle would be incriminating is Mr. Steinman's statements  
14    with respect to the felony convictions.

15          THE COURT:   Mm-hmm.

16          MR. MCCLELLAND:   It's only after he decided to seize  
17    the vehicle that he's able to confirm them through the  
18    dispatch records check that he does.   So we think that  
19    actually the *Miranda* custodial problem, if the Court resolves  
20    this case on that ground, would also render deficient the  
21    seizure itself through sort of a, you know, the only reason  
22    for the seizure was the felony convictions.   The only  
23    conceivable one is the felony convictions.   He's only able to  
24    get elements of that from Mr. Steinman's statements.

25          With that, Your Honor, unless the Court has any

1 additional questions with respect to any of the arguments, we  
2 would ask that the Court suppress evidence collected during  
3 and as a result of this stop.

4 THE COURT: Okay. Thank you.

5 So I'll come back to you and give you some rebuttal  
6 after I hear from the government.

7 Go ahead, Mr. Keenan.

8 MR. KEENAN: I'll start with the reasonable  
9 suspicion to stop for speeding. I think it's been briefed. I  
10 mean, the facts are laid out and I don't think it's unclear  
11 from the record in one bit. The testimony today was that the  
12 trooper observed 89 miles per hour on the radar. And as  
13 Your Honor asked with regard to the defendant's statements,  
14 they're absolutely corroborative of what he saw. I mean, if  
15 he sees 89 on the radar gun, goes up and tells someone, I  
16 saw -- I had you going 89, and they say, oh, I thought it was  
17 85, that certainly corroborates what they observed. He had  
18 reasonable suspicion to stop the defendant for speeding.

19 There's nothing to suggest that the radar wasn't  
20 working. He's trained to use it. There was no other car  
21 around behind the defendant when this radar situation would  
22 have happened. There was reasonable suspicion for speeding.

23 As far as the criminal history check, obviously, we  
24 have some disagreement here. The suggestion that the driver's  
25 license check tells you everything is just not true. It

1 doesn't tell you if someone has been convicted of a crime.  
2 For that matter, it will tell you warrants but not criminal  
3 history. It's just -- the suggestion that that should dispel  
4 any sort of officer safety concern because the person may not  
5 have a warrant, I mean, certainly someone may not have a  
6 warrant, but they could have recently -- somewhat recently  
7 committed a murder. That wouldn't show up on a driver's  
8 license check. That would show up on a criminal history  
9 check. Or it could show that someone was convicted of  
10 resisting arrest the week before. These are things that are  
11 relevant to officer safety that wouldn't show up on a driver's  
12 license check.

13           And, you know, *Hylton* and *Taylor* are extremely  
14 informative. As far as I can tell, this notion that it has to  
15 be routine isn't really what at least I get from reading those  
16 cases. It's that it's a negligibly burdensome precaution.  
17 That's consistent with the mission of the stop, and that  
18 mission being to conduct it safely. That sort of safety -- I  
19 mean, and it relies on *Rodriguez*. They rely on *Rodriguez* and  
20 this notion that these car stops are especially fraught with  
21 danger where you can be pulling someone over, you may not  
22 know, like in this case, that there's a loaded gun underneath  
23 the driver's seat. You may not know that there's 37 other  
24 guns in the car. It's something you're walking into and you  
25 just don't know.

1           And the courts have found that running this criminal  
2 history check is a negligibly burdensome precaution necessary  
3 and consistent with the mission of stop being to conduct that  
4 stop safely.

5           You know, there's some notion that, you know,  
6 because, obviously, there wasn't a safety concern because he  
7 didn't frisk the defendant or because he was not in his car,  
8 these concerns I don't know that you can say they just -- they  
9 start and stop that easily. For instance --

10           THE COURT: I guess just one little, just trying to,  
11 like, think about the facts, the things that I heard. He did  
12 say that he doesn't usually run a criminal -- it's absolutely  
13 true that he has a dangerous job. And it's absolutely true  
14 you never know who you're going to be talking to -- right? --  
15 or what they have in the car. So I understand that. But  
16 here, just factually, he said that he doesn't usually run a  
17 criminal history check. Whether it takes one minute or  
18 90 minutes, he doesn't usually do it. And he did it based on  
19 his suspicion. But it -- but he also said in the preliminary  
20 hearing that he wasn't afraid of the person. He didn't  
21 feel -- I don't know if he said the word I didn't feel unsafe,  
22 he wasn't afraid of this person. He has this conduct that  
23 indicates he's not afraid of the person which just gets us  
24 into that zone of well, what is the purpose of the check? Is  
25 it routine officer safety within the mission of à la

1     *Rodriguez*, or is it some adjunct that's sort of really  
2     motivated purely by investigator motive. And he testified  
3     that it wasn't investigatory motive.

4             MR. KEENAN: Yeah. And I would agree with that  
5     characterization of the facts here. I would say with respect  
6     to certainly with probable cause, reasonable suspicion, the  
7     subjective intent of the officers never matter. And I don't  
8     know that his subjective intent, at least in this case,  
9     matters in a *Hylton-Taylor* analysis. What *Hylton* and *Taylor*  
10    do are stand for the fact that an officer may do this. It  
11    doesn't say they have to do it if they're afraid. Like the  
12    subjective motivations of the officers are never addressed in  
13    these cases.

14            And, for instance, I believe it's in *Taylor*, the  
15    officer had already been told that the person was a felon who  
16    was on parole. And then it was still okay for him to  
17    reference the computer database to look at that individual's  
18    criminal history. So if we think about the motivations,  
19    like -- or his subjective intent or knowledge in that  
20    situation, he would have already known that this person was  
21    potentially dangerous, but he was still permitted to run that  
22    check. So I don't know that the rationale for allowing these  
23    checks turns on the subjective motivations of the --

24            THE COURT: And I'm not trying to pin this on the  
25    subjective. I'm trying to look at what was he factually

1 doing. And there is this distinction in the case law. And  
2 *Hylton* and *Taylor* are sort of in one basket, and then we do  
3 have the sort of *Gorman/Rodriguez*, which is you can do routine  
4 checks that are consistent with what you usually do. And we  
5 have an officer saying, I don't usually do this, this is about  
6 an investigation. So those are just -- I understand we sort  
7 of may have kind of some period of the stop where there's kind  
8 of running on parallel tracks and we're seeing if one should  
9 end or start.

10 MR. KEENAN: Right.

11 THE COURT: But that was his testimony.

12 MR. KEENAN: Right. And I think the check itself is  
13 different from *Evans*, for instance, which just is designed to  
14 figure out if someone registered as a felon at a particular  
15 address. It's not to actually uncover the history of that  
16 individual which would be relevant to officer safety. So  
17 it's, it's -- in and of itself the check is pretty much only  
18 an investigatory purpose rather than informative as to officer  
19 safety which is the entire justification for the check. So I  
20 think that's the reason.

21 THE COURT: I think I've lost you there. You're  
22 telling me that the check was for investigation.

23 MR. KEENAN: In *Evans*, the check itself.

24 THE COURT: But I have an officer who was on the  
25 stand saying that the check was for investigation. It's a

1 non-routine check. The reason he put him in the car was not  
2 for officer safety, it was to ask him questions for his  
3 investigation because he was --

4 MR. KEENAN: Suspicious.

5 THE COURT: -- suspicious. Right, so I understand  
6 maybe the suspicion is good enough to do this all until the  
7 suspicion is dispelled; right. I get that. But it  
8 distinguishes it sort of from a routine quicky check like is  
9 happening in *Hylton* and *Taylor*. And it does -- it's not an  
10 *Evans* check, but it's more like an *Evans* check in the sense  
11 he's kind of digging around.

12 MR. KEENAN: I guess the distinction I'm making is  
13 with the check itself.

14 THE COURT: Like the kind of check.

15 MR. KEENAN: Yes, the type of check. And one has  
16 been justified for officer safety reasons, the other has no  
17 real purpose that would be relevant to officer safety, which  
18 is how the courts are defining the mission of this stop. So I  
19 think that's where we land in different buckets.

20 THE COURT: Okay. And the reason this check is  
21 relevant to officer safety is what?

22 MR. KEENAN: Because it reveals someone's criminal  
23 history. For instance, in this case, it revealed that this  
24 individual --

25 THE COURT: Doesn't someone's criminal history



1 always, like -- I mean --

2 MR. KEENAN: So a felon --

3 THE COURT: -- every criminal history check reveals  
4 criminal history. And we have cases that are distinguishing  
5 between these checks, but they all reveal criminal history.

6 MR. KEENAN: Well, the *Evans* check isn't criminal  
7 history. It's a felon registration address database. I don't  
8 know that it even tells you what they're convicted of.

9 THE COURT: I see.

10 MR. KEENAN: So it really, it doesn't give  
11 background --

12 THE COURT: Right. But *Gorman* is a criminal history  
13 case.

14 MR. KEENAN: -- of a different crime.

15 THE COURT: Isn't *Gorman* a criminal history case?

16 MR. KEENAN: I'm sorry.

17 THE COURT: Isn't *Gorman* a criminal history case,  
18 like a non-routine criminal history check?

19 MR. KEENAN: I'd have to check.

20 THE COURT: I may be mistaken about that.

21 MR. KEENAN: So in a similar way, *Gorman* is a human  
22 trafficking database --

23 THE COURT: Mm-hmm.

24 MR. KEENAN: -- that deals with smuggling, money  
25 laundering, and human trafficking. I don't know that that

1 necessarily gives you background. It's more like *Evans* than  
2 the check itself, or the information that the check provides  
3 is much more like *Evans* than the background information of  
4 *Hylton* and *Taylor*. Like a typical, your typical criminal  
5 history check. So these are, like -- these two, *Evans* -- or  
6 *Gorman* and *Evans* are investigatory-type databases, and another  
7 is what's this person's history? So I think that's where they  
8 fall into different buckets.

9 THE COURT: But you would agree that what this  
10 person's history is part of a criminal investigation and not  
11 part of a traffic investigation that's relevant to safe  
12 driving?

13 MR. KEENAN: The information itself I think is  
14 relevant to -- to -- well, obviously, relevant to both.

15 THE COURT: Mm-hmm.

16 MR. KEENAN: But I think the reason one has been  
17 deemed by the Ninth Circuit to be allowable and consistent  
18 with the mission of the stop is because of the information  
19 that it provides. I don't think it's the subjective  
20 motivation of the trooper or the suggestive investigatory  
21 purpose, it's the information itself.

22 THE COURT: Okay.

23 MR. KEENAN: Well, that being said, I do believe  
24 that at the time that the criminal history check was run that  
25 we would submit that there was reasonable suspicion to suspect

1 that firearms were in the vehicle. And I think the briefing  
2 touches on this. And, you know, the -- the defense for some  
3 reason never mentions the totality of the circumstances, which  
4 I think is important here. If you pick apart every  
5 potentially innocent behavior and look at them one by one, of  
6 course, you'd also say, well, this isn't probable cause, it's  
7 a blanket.

8 THE COURT: No, I think I understand. I think it  
9 kind of boils down to if you put these things together, you  
10 have ammunition, felony status, blanket, and some sweaty  
11 nervousness.

12 MR. KEENAN: And some inconsistent answers, we would  
13 argue, for probable cause in terms of having ammo and then oh,  
14 no, the box is empty, which I think is in the warrant itself  
15 as well.

16 THE COURT: Yes. Right. Whether that adds up to  
17 reasonable suspicion.

18 MR. KEENAN: And certainly --

19 THE COURT: And then ultimately, whether even if it  
20 adds up to reasonable suspicion, it kind of gets us over the  
21 fence to probable cause.

22 MR. KEENAN: Right. And I think there is -- I guess  
23 the dividing line between what we're looking at is before the  
24 criminal history check is run whether there's reasonable  
25 suspicion. And the facts before that reasonable suspicion, I

1 think that came out today, were the blanket, answer, the ammo  
2 box, the sweating and the nervousness. There's been some  
3 suggestion in some of the reports and whatnot there was sort  
4 of overcompliance that, you know, just give me my ticket,  
5 which does -- I realize does seem slightly unusual in a  
6 traffic stop when I think typically people are trying to get  
7 out of tickets. I think both of those things happened during  
8 this stop. But that being said, we would rely on the --  
9 primarily on the blanket, the nervousness, the ammo box, the  
10 admission to having ammo in the vehicle I think is  
11 particularly relevant.

12 THE COURT: Mm-hmm.

13 MR. KEENAN: And then that's when that criminal  
14 history check is run. And then once -- the information  
15 provided after that are the felony assault conviction for  
16 domestic violence, and then the inconsistent answers about the  
17 ammo in the vehicle, and some slightly misleading, vague  
18 answers, some untruthful answers about criminal history. I  
19 think with respect to that, I would point to at least to the  
20 question I believe was, was it a felony assault charge? The  
21 answer was no. And it was certainly listed in this criminal  
22 history printout, particularly in the indictment in this case.  
23 But -- and the trooper believed that to be deceptive.

24 So those facts and the totality of the  
25 circumstances, and, again, as I alluded to earlier, I think it

1 was clear from the testimony, this officer, this trooper, did  
2 not know if he had probable cause.

3 THE COURT: That's definitely clear.

4 MR. KEENAN: And he was -- and was not afraid to ask  
5 multiple people what they thought of it.

6 THE COURT: Everyone.

7 MR. KEENAN: I think that is behavior we should  
8 encourage.

9 THE COURT: It is behavior we should encourage, but  
10 it is a very odd posture because there's an aspect of  
11 laundering probable cause through a warrant. He knows -- I  
12 mean, I asked him. He knows that he can go into the car if he  
13 has probable cause. I also -- I mean, I taught this, and I  
14 would always say, look, if someone gets a warrant, God bless,  
15 that's wonderful. But one of the aspects in the way the law  
16 works is that once you get the warrant, there's so much  
17 deference to the warrant. But he already had sort of this  
18 private conversation, which is really unusual, with the judge.  
19 But the reason he's getting the warrant is to sort of, I  
20 understand, look, you might often have a situation where  
21 you're, like, uhh, is it probable cause? Isn't it probable  
22 cause? I'll just let the judge decide. This is different  
23 than that because it's not like I'll just let the judge  
24 decide. He testified that he was asking the judge about  
25 process. But, I mean, I heard, at least the half of the

1 conversation I could hear, he's not asking him about process,  
2 he's saying what do you think? Is this probable cause? And  
3 he keeps asking the same question, is it good enough? So that  
4 has a different flavor than just, like, I'll put all this in  
5 front of the magistrate judge, and I'll live with what the  
6 magistrate judge says.

7 MR. KEENAN: And I think, again, we're sort of  
8 getting into subjective motivations, and at least with respect  
9 to probable cause, you know -- I don't mean to say no, that's  
10 just -- I apologize.

11 THE COURT: That's okay.

12 MR. KEENAN: You know, he presents the facts, and  
13 those are viewed from the standpoint of an objectively  
14 reasonable police officer. So ultimately, whether he knew he  
15 had probable cause or not is irrelevant to the analysis.

16 I think the notion that he is potentially doctoring  
17 up probable cause is at least belied by the fact that he had  
18 never done this before. He doesn't know what kind of  
19 deference a search warrant gets from the testimony. Like, how  
20 would he know? And I think the best explanation --

21 THE COURT: Well, he was trained on this, which is  
22 why he's so nervous about getting it right. And he was  
23 trained on -- he knew there was an exception you don't need a  
24 warrant if you actually have probable cause.

25 MR. KEENAN: And I think that's commendable that

1 he -- and I think the easiest explanation for calling, and I  
2 think the testimony today was I wanted to see if it was even  
3 going to be entertained. Because he doesn't want to tow a  
4 car, have the defendant walk along the side of the road if a  
5 search warrant is ultimately going to get denied.

6 THE COURT: I understand that --

7 MR. KEENAN: It's practical.

8 THE COURT: I understand that it wasn't all just  
9 practical. Practical might be are you there tonight? You  
10 know, are you leaving? Can I get this done? That's sort of  
11 like a logistical question. Whereas he is getting a little  
12 bit of a sneak peak of how that's going to go out.

13 But I do want to ask specifically, do you -- is it  
14 your position that that automobile was seized on the side of  
15 the road and that that was a warrantless seizure?

16 MR. KEENAN: Well, yeah. It was seized in  
17 anticipation of the warrant.

18 THE COURT: Do they need probable cause to get that,  
19 to do that?

20 MR. KEENAN: Yeah, I think that's fine.

21 THE COURT: That's consistent with your briefing,  
22 I'm just making sure.

23 MR. KEENAN: Yeah. And all the facts that  
24 ultimately went into this warrant are already established by  
25 the time that car is seized.

1 THE COURT: Yes.

2 MR. KEENAN: So it's not inconsistent with anything,  
3 I think, that we've argued factually, legally, or otherwise.  
4 The probable cause was established before that vehicle was  
5 towed, so I don't know that --

6 THE COURT: Mm-hmm.

7 MR. KEENAN: -- that we've really grappled with that  
8 issue for that very reason. If there were additional facts  
9 learned later, I think maybe the analysis --

10 THE COURT: But would it be your position that if  
11 probable cause exists, then the warrant is irrelevant?

12 MR. KEENAN: No.

13 THE COURT: Why?

14 MR. KEENAN: Well, certainly they wouldn't have  
15 searched this car without a warrant.

16 THE COURT: Why? They have probable cause.

17 In the hypothetical -- I'm just giving you a  
18 hypothetical; I'm not saying they did. If they have probable  
19 cause on the side of the road, is the warrant or the defects  
20 in the warrant, you know, because you admit there are defects  
21 in the warrant, but is that still relevant if they had  
22 probable cause, or does that just all fall away because once  
23 you have probable cause you're good?

24 MR. KEENAN: Certainly the exclusionary rule  
25 analysis, I think that it's an important question because --



1 so I think the question is do we want to penalize them for  
2 having even gotten the warrant when they had all the probable  
3 cause before? And just because the warrant, like, lacks some  
4 specificity, does it undo the probable cause that they already  
5 had? I don't think the probable cause dissipates when they  
6 get a warrant. So the facts don't go away. So technically,  
7 they could have still searched that vehicle.

8 Again, like I said, I don't know that they would  
9 have.

10 THE COURT: The defect -- right, the defects might  
11 go away with the warrant. If you admit that there's a  
12 defective warrant, I'm trying to figure out if I even need to  
13 address the defective warrant because if you have probable  
14 cause, I'm done.

15 MR. KEENAN: Understood.

16 THE COURT: Right? Okay.

17 MR. KEENAN: And I think it goes both ways. I mean,  
18 if -- and I'm not saying the warrant was defective. Certainly  
19 we would concede that it should be excised in terms of the  
20 search for drugs, paraphernalia, stolen property, as was  
21 mentioned. But it's certainly lawful and valid and includes  
22 probable cause to search for firearms.

23 And I'm not sure, and I'm unclear on the law, and it  
24 seems to me a somewhat new argument that somehow it can't be  
25 severed in any way. And that's news to me. But, again, I

1 haven't heard any law on it, but it's certainly not in any of  
2 the law that I've seen that allows warrants to be severed.

3 And so I would -- I would say two ways. So there  
4 was probable cause for the warrant. It can be -- for what  
5 there wasn't probable cause can be severed from it. And the  
6 warrant was executed absolutely, we would argue, in good  
7 faith.

8 THE COURT: So what about just -- I'm also a little  
9 unclear on how the *Evans* works sequentially and in combination  
10 with the good faith. They've made an argument that good faith  
11 doesn't apply because there's an overbreadth problem. But is  
12 it your position that if the -- and good faith only comes if  
13 we -- so we have a defective warrant in some way. And the  
14 question is what -- that severance is a remedy. And good  
15 faith is also a remedy; right? So, but how do they work  
16 together? Just spell that out for me in terms of my -- like,  
17 if I have my warrant and I've made my ruling that there's  
18 something wrong and I'm using my red pen to say what's left.

19 MR. KEENAN: Right.

20 THE COURT: You tell me.

21 MR. KEENAN: So what's left are all the facts and a  
22 judge that says you can search for firearms, and an affidavit  
23 that says I want to search for evidence of ex-felon in  
24 possession of firearms, I believe. I'm sort of half quoting.  
25 But if you take out at least in terms of the warrant itself,

1 references to what there -- we would concede there is not  
2 probable cause established by the affidavit, which is  
3 essentially everything except firearms or -- I forget, firearm  
4 related items. But even if it's just firearms, it's not  
5 overbroad. So once those things are excised, and we can  
6 pretend they don't exist in the warrant, is that warrant  
7 overbroad? And I believe the defense is arguing that just  
8 saying firearms is overbroad.

9 THE COURT: I think it's partly that sort of it's  
10 not like you have one part of the warrant on one part about  
11 one kind of thing and another part of the warrant on another.  
12 You know, they're all lumped together with a simple sentence.  
13 One of the problems with that simple sentence that I have, and  
14 I'm not sure I've found. But it seems to me that on good  
15 faith we have, like, a little factor test. But there is  
16 something happening here which is I think relevant to some of  
17 the case law I've seen on sort of interactions, the interplay  
18 between severance and good faith, is just this question of,  
19 you know, what was served to the magistrate and approved by  
20 the magistrate was a warrant for guns and drugs and stolen  
21 stuff.

22 MR. KEENAN: Correct.

23 THE COURT: That's what the magistrate had the  
24 opportunity to review. And so there's a question of severance  
25 and lumping things together; right? That's the sort of

1 conflict of whether the magistrate would have approved the  
2 sort of much thinner warrant that we would be left with after  
3 getting rid of what we're not -- what's, you know, after  
4 redacting the problem areas of the warrant -- right? -- which  
5 is there is nervousness -- I mean, the things we're talking  
6 about, nervousness, ammunition, and that's -- that's the whole  
7 thing, and no connection to guns -- I mean, no connection to  
8 drugs, stolen property, paraphernalia.

9 MR. KEENAN: Well, I think that notion is  
10 interesting. Because, I mean, excising of that actually makes  
11 it a better warrant not a thinner warrant. It would be  
12 limited to searching for a more narrow set of items which  
13 would be better and would have been better in this case. I  
14 think Your Honor's correct to suggest that I think maybe that  
15 gets us into whether it was sort of the other factors, not  
16 overbreadth, but maybe, like, whether someone actually read  
17 this type thing or just signed off on it.

18 I think that's the analysis that that would sort of  
19 interplay with.

20 THE COURT: Mm-hmm.

21 MR. KEENAN: I think once it's severed, though, one,  
22 there's probable cause. And that was -- I don't think there's  
23 any -- been any suggestion that it was tainted by sort of  
24 earlier conversations with the judge.

25 And I guess I just want to mention, while I'm

1 thinking of it, this trooper spoke to, like we said, at least  
2 three people. And all those conversations are on body cam,  
3 and all of them contain identical, pretty much identical sets  
4 of facts that he's relaying to these people. And I believe  
5 they're also the same ones that went into the warrant.

6 THE COURT: I agree with that.

7 MR. KEENAN: So this is someone seeking help,  
8 relaying the same facts that are true, not misrepresenting to  
9 any one of the four people if you include the actual judge --

10 THE COURT: Mm-hmm.

11 MR. KEENAN: -- and trying to do the right thing and  
12 submitting that warrant to the judge, albeit his first warrant  
13 to the judge. So, and, again, I hate to say it again, but,  
14 you know, if we're looking at the justification for the  
15 exclusionary rule to deter unlawful police conduct, I guess my  
16 question in this case would be, certainly with respect to the  
17 warrant and the way this was handled, what are we trying to  
18 deter? And I hope it's not trying to ask people for help and  
19 going to get a warrant instead of just rummaging through  
20 someone's car. Granted they could have because there was  
21 probable cause, but that's that.

22 I guess I don't want to get too far afield. There  
23 was -- the defense has cited the *Nora* case to suggest some  
24 sort of overbreadth. That case involved -- I believe they saw  
25 someone with a gun, arrested them, and then they got a warrant

1 for guns at the person's house. It had nothing to do with  
2 ammunition. It does stand for the proposition that, you know,  
3 if you specifically see someone with a gun and recover that  
4 gun, you can't just get a warrant to search their residence  
5 for guns. You know, I think it's a completely different  
6 analysis from what we've argued with respect to the link  
7 between ammunition and firearms. That's just one gun to  
8 assume there's more guns. I think ammunition has a different  
9 relationship with firearms.

10 THE COURT: But there's these cases, and I'm going  
11 to fail to remember the names of them, but there are these  
12 cases where you have some particular fact about the  
13 ammunition, for example, is the ammunition on the person?  
14 Does the person have a fanny pack that's unzipped and it's  
15 sort of -- it's like kind of crying out, or a strap crying out  
16 like there might be something going on here. We don't have  
17 that in this case. This is the absence of facts that kind of  
18 point that there's not always -- there may be a dotted line  
19 between ammunition and firearms. There's not a straight line,  
20 and we haven't filled in the dots between the two here.

21 MR. KEENAN: So -- and what's interesting about  
22 those cases is the ammunition and magazines I think that were  
23 on the person, they weren't in the vehicle. So actually  
24 there's probably less probable cause to suggest that a gun was  
25 in the vehicle when those are found on the actual person. So

1 in this case, in our case, we have an admission that there's  
2 ammo in the vehicle itself. And in these -- that other case,  
3 there was just ammo on this person who got out of a vehicle,  
4 but they still had probable cause to go into the car to search  
5 for guns.

6 So I think, at least in terms of the link to the  
7 vehicle, we're in a much better position here than those  
8 cases.

9 With respect to the gun versus firearm, the defense  
10 made some suggestion that these were magazines and a holster  
11 which more closely relate to, I guess, firearm possession than  
12 ammunition. You know, a revolver, you don't have a magazine,  
13 you just put ammunition right in the gun, the same way you put  
14 a magazine in some -- in a pistol. So I don't see a  
15 meaningful distinction that is worthy of distinguishing those.

16 THE COURT: Mm-hmm.

17 MR. KEENAN: And I think this -- if you look at the  
18 broad justification for why that link exists, and also in  
19 those cases we had some additional sort of levels of suspicion  
20 that I think we also have here in terms of the excessive  
21 movement.

22 THE COURT: His excessive movement?

23 MR. KEENAN: Excuse me?

24 THE COURT: The excessive movement? Like, before  
25 the car stopped?

1 MR. KEENAN: As the -- right as the car was stopped,  
2 which I failed to mention in terms of the reasonable suspicion  
3 before.

4 THE COURT: Okay.

5 MR. KEENAN: But I think it's -- you know, it's  
6 pretty -- that's more than just driving. Watching the video,  
7 I think it's clear that's more than just grabbing a driver's  
8 license. There's -- having watched it a few times, there's  
9 much more than just I'm going to go get my driver's license.

10 And as the defense pointed out, you can't see what's  
11 in there. All you see is a person moving around. And I think  
12 that raises even more sort of concerns for safety, which is  
13 sort of part of this whole analysis that I thought I'd  
14 mention.

15 And I guess lastly, so we don't go over and over,  
16 there is some suggestion about the misrepresentations in the  
17 search warrant. I think it's pretty clear from the body cam  
18 that there are no misrepresentations. And to the extent it's  
19 relevant when the convictions were verified versus when he  
20 read a printout, that there's no reason to distrust that it's  
21 a felony guilty disposition.

22 THE COURT: Mm-hmm.

23 MR. KEENAN: Whether that changes sort of the search  
24 warrant analysis is certainly immaterial. But it doesn't, to  
25 me, seem like any sort of inconsistency or misrepresentation.



1           And I believe it was probably only raised to try and  
2     work some sort of good faith argument.

3           I think I've touched on most of this, but I guess  
4     just to --

5           THE COURT:   There's one argument that I think you  
6     haven't touched on and I think it's important.   He testified  
7     that he was enforcing Nevada law.   There's this legal issue  
8     about whether he can as sort of in the here and now make this  
9     about federal law when he wasn't, A, tasked with doing that.  
10    And we have some case law in the Ninth Circuit that addresses  
11    that.

12          MR. KEENAN:   Yeah.   And I think it sort of -- I  
13    mean, there's a couple cases that go different ways.  
14    Certainly the *U.S. Currency*, I'll call it the *U.S. Currency*  
15    case --

16          THE COURT:   Yes.

17          MR. KEENAN:   -- is the least favorable in terms of  
18    state and federal law.   What I would say about that case,  
19    which I think is a meaningful way to distinguish it, is in  
20    that case they searched a dispensary pursuant to a search  
21    warrant.   That was their only basis for even getting into that  
22    dispensary to conduct the search.   They were relying solely,  
23    solely upon the state search warrant that made no mention of a  
24    federal law violation.   And because of that, they couldn't  
25    then rely on federal law to justify their search.

1           This case is different because of the automobile  
2       exception. I think we talked about this, and it's similar to  
3       what we were saying before, where that probable cause existed  
4       for the federal law violation as soon as he saw a felony  
5       conviction on the criminal history printout. And he could  
6       have searched that car without a warrant.

7           THE COURT: But could he? I thought that was part  
8       of the analytical question. Could he, could he -- he can go  
9       into that car based on a federal law violation on the side of  
10      the road there?

11          MR. KEENAN: So it -- I think it's ambiguous whether  
12      that's permissible under state law, but it doesn't change --  
13      the law that we cited, it doesn't change the analysis under  
14      the Fourth Amendment as to whether that search would have been  
15      reasonable. And because it is a federal crime to have  
16      ammunition if you have previously been convicted of a felony,  
17      that makes -- that would have made that search reasonable as  
18      soon as he heard the admission that there was ammo and then  
19      saw that this person had previously been convicted of a  
20      felony.

21          So the difference between this and the *U.S. Currency*  
22      case is that that -- the automobile exception that would have  
23      allowed them to search pursuant to a federal law violation  
24      existed. Whereas, in the *U.S. Currency* they were only  
25      operating on a state search warrant that never mentioned a

1 federal law.

2 THE COURT: I'm just -- okay. I'm kind of missing.  
3 My -- I may be missing something, but my understanding of  
4 probable cause is that probable cause is probable cause no  
5 matter where it shows up. It can show up in the automobile  
6 exception, and that's like full-on regular probable cause.  
7 And it can show up in a warrant. And it is the same, actual  
8 same probable cause. So I'm just not sure why it being on a  
9 piece of paper versus being on the side of the road. The only  
10 way that the person could go into the dispensary would have  
11 been if they said this violates federal law, and that's  
12 exactly what -- the only way that this trooper can get into  
13 that car is to say, look -- is to say -- maybe he has probable  
14 cause to think that there's a firearm. Okay. But he -- if  
15 the only basis is that he -- I mean, has -- he does have  
16 probable cause to believe that there's ammunition in the car.  
17 Like, if that's a crime --

18 MR. KEENAN: Right.

19 THE COURT: -- that's clear. But the only basis for  
20 him to say that that's enough probable cause is federal law,  
21 so I'm a little bit lost on the paper distinction between  
22 those two cases.

23 MR. KEENAN: Well, the distinction I'm making is the  
24 only way for them to have conducted that state search warrant  
25 in *U.S. Currency* is by getting a warrant, and that's not the

1 case here.

2 THE COURT: Okay.

3 MR. KEENAN: I think it's a meaningful distinction  
4 simply because the reasonableness of that search was then  
5 evaluated by whether a warrant was valid, and for that reason  
6 only. Because otherwise they wouldn't have ever been able to  
7 get in there.

8 THE COURT: Okay. I'm going to ask defense about  
9 this question, so I want to ask you first. You cited to  
10 *Virginia v. Moore*, which goes to whether -- not whether  
11 something's a crime, but whether you can seize or must cite in  
12 lieu of seizing. Do you think that that's relevant here?

13 MR. KEENAN: I have *Virginia v. Moore* over here, if  
14 I can just grab it.

15 THE COURT: Okay.

16 MR. KEENAN: So we submit that the -- that *Moore*  
17 stands for the proposition that a violation of state law -- in  
18 that case it was making an arrest that wasn't permissible  
19 under state law affected the Fourth Amendment analysis.

20 THE COURT: Right. But in *Moore* there was no debate  
21 that what they were talking about was a crime. The only  
22 debate was what you do about the crime. Here we're talking  
23 about whether it's a crime, if we're just talking -- I'm just  
24 for a moment, of course, we're focusing just on the  
25 ammunition. Here the question is whether it's a crime.

1 MR. KEENAN: Right. And I see that as a distinction  
2 sort of without a difference, because I think this stands more  
3 for the proposition of how we analyze the Fourth Amendment  
4 sort of with an eye towards a potential state law violation.  
5 Less so than for sort of what it explicitly, factually is  
6 talking about.

7 THE COURT: Okay.

8 MR. KEENAN: And then, I guess briefly, I'll touch  
9 on the *Miranda* issue.

10 THE COURT: Sure.

11 MR. KEENAN: And I would note the defense never  
12 argues that the answer -- I don't think the answers couldn't  
13 be considered for probable cause. They did allege the *Miranda*  
14 violation, but I don't know that it was ever specifically tied  
15 to a determination of probable cause.

16 That being said, defense also failed to mention the  
17 *Berkemer v.* -- I don't know that. I'll spell it though.  
18 *B-e-r-k-e-m-e-r v. McCarty.*

19 THE COURT: Right. Stands for *Miranda* for a typical  
20 traffic stop.

21 MR. KEENAN: Right. And I think what's sort of --  
22 when I was listening to your argument, what's sort of being  
23 conflated is the notion that just because you're not free to  
24 leave means you're in custody for *Miranda* purposes. And  
25 that's not necessarily true because in a *Terry* stop, you

1 actually are not free to leave. And that's why it's certainly  
2 more nuance than that, and it has to be sort of this  
3 functional equivalent of being under arrest.

4 THE COURT: Mm-hmm.

5 MR. KEENAN: And the factors I think that came up  
6 today that would suggest there was no functional equivalent of  
7 an arrest are that Mr. Steinman was never cuffed, searched,  
8 placed in the back of a patrol car. He sat in the front of  
9 the patrol car with the door open until an air conditioning  
10 issue came up I think. While they waited for the tow truck,  
11 he was wandering around, talking on the phone, I think sitting  
12 on the hood of his car for a little bit. These are absolutely  
13 not things that I think we think of when we think of someone  
14 who is under arrest. In fact, they're the complete opposite.

15 This is a *Terry* stop. He was not free to leave, but  
16 he was not in custody.

17 And I assume the defense would argue this isn't an  
18 ordinary traffic stop. I would agree. At some point this  
19 definitely did not -- this became not an ordinary traffic  
20 stop --

21 THE COURT: Mm-hmm.

22 MR. KEENAN: -- I think at the point where they're  
23 seizing his vehicle. And -- but nonetheless he was still not  
24 in custody. He was told he was free to leave. He was asked,  
25 do you want a ride somewhere? Do you want to walk? I think,

1 even though his subjective sort of view on it is not relevant,  
2 but even Mr. Steinman seemed to believe for almost the entire  
3 time that he was just getting a ticket. And he was told he  
4 was getting a ticket multiple times. And these are things we  
5 associate with traffic stops, not arrests.

6 THE COURT: Okay.

7 MR. KEENAN: I guess lastly, just some sort of  
8 miscellaneous things with the blanket. There was not  
9 inconsistent testimony. I believe I asked if he could see  
10 what was under the blanket. And the answer was no, but he  
11 believed that there were things under the blanket. Not that  
12 he could see it.

13 THE COURT: Mm-hmm.

14 MR. KEENAN: But it wasn't on the seat of the car,  
15 but it was raised up, which led him to believe there were  
16 things under it, but he couldn't see what they were. There's  
17 not an inconsistency there.

18 I think that's it. Let me just check.

19 Okay. Nothing further on this.

20 THE COURT: Okay.

21 MR. KEENAN: Thank you.

22 THE COURT: Thank you very much.

23 All right. Do you want to wrap up?

24 MR. MCCLELLAND: Yes, Your Honor.

25 So I'll start with the Court's question about

1 *Virginia v. Moore*, and it's thankfully, I think, a pretty  
2 short answer. It doesn't apply. Where in *U.S. Currency* world  
3 deals with an entirely different sort of fact pattern. I  
4 think in many ways the *United States v. Talley* case that we  
5 cite out of the Northern District of California in our reply  
6 briefing, I mean, in many ways you could search and replace  
7 the word "marijuana" with "ammunition" in that case --

8 THE COURT: Mm-hmm.

9 MR. MCCLELLAND: -- and resolve this one. It  
10 applies, I mean, the *United States Currency* rule to an  
11 automobile search very squarely on fours with the general fact  
12 pattern that we have here.

13 THE COURT: Mm-hmm.

14 MR. MCCLELLAND: Notwithstanding the fact that the  
15 car here was seized roadside, not searched roadside, but basic  
16 contours analysis still apply.

17 A couple of additional thoughts, and I'll be as  
18 brief as I can. With respect to the warrant and the validity  
19 of the warrant and how that interplays with probable cause to  
20 seize the vehicle, a couple of thoughts. One, the warrant  
21 analysis and excising categories I think is really more of a  
22 *Franks* issue. So we do raise a *Franks* argument in our  
23 briefing with respect to the warrant application. And when  
24 there's a *Franks* problem with misrepresentations or admissions  
25 in a warrant application, you know, you basically Frankenstein



1 the right application back together, and sometimes that  
2 involves excising stuff from the application. But the  
3 overbreadth analysis, à la *United States v. Spilotro* -- I'm  
4 probably mispronouncing that, *Spilotro*, maybe -- the  
5 overbreadth analysis doesn't excise categories out of the  
6 warrant. Instead, you're looking at, as I think Mr. Keenan  
7 pretty nicely keyed in on, you're not excising categories out  
8 of the warrant, because in many ways that would fix the  
9 overbreadth problem. If there's an overbreadth problem,  
10 there's an overbreadth problem. And so the question is not  
11 excision, it's severance. And I'm sorry to hear that  
12 Mr. Keenan hadn't heard of the simply lumping rule from  
13 *Spilotro*, but we cite *Spilotro* at pages 18 through 19 of our  
14 reply briefing, and I think pretty clearly lays out how in a  
15 warrant like this one, which I think it's worth emphasizing is  
16 two paragraphs long, that's Defense Exhibit 504, when the  
17 warrant lumped categories with clearly no probable cause with  
18 other categories in the same sentence and doesn't  
19 differentiate them, then *Spilotro* says you can't do severance.  
20 And by the seam token, you can't do good faith reliance on  
21 such a facially overbroad warrant.

22 I think there's an interesting question about how  
23 much difference there is between the statement you can't do  
24 severance and you can't do good faith reliance, but *Spilotro*  
25 says doesn't matter, you can't do either.

1           So that's -- I mean, I think that's the relevant  
2       discussion with respect to the warrant overbreadth issue.

3           And I think the way that it ties in with the  
4       roadside seizure issue, so assuming, and this is assuming a  
5       whole host of things, assuming that the roadside seizure was  
6       supported by probable cause, the warrant overbreadth issue is  
7       still material because the roadside seizure being supported by  
8       probable cause, by the government's own concession, would not  
9       have allowed an invasive search for multiple different  
10      categories. So to the extent that the officers could have  
11      done a roadside search, it would have been substantially  
12      narrower than the search that they ultimately performed on the  
13      vehicle.

14           So the fact that the warrant that at issue here is  
15      unsupported by probable cause, and in many ways I take the  
16      government to be conceding that it is at least in some way  
17      deficient, even if there is severance arguments or what have  
18      you, that's material to the ultimate search of the vehicle.

19           And the fact that there was a search that was  
20      authorized for more than there was probable cause for is its  
21      own Fourth Amendment violation that warrants suppression.

22           Couple of thoughts also on the prolongation front.  
23      I mean, at the end of the day, *Hylton* and *Taylor* and *Evans* and  
24      *Gorman* and *Rodriguez*, they are what they are. But I think the  
25      Court's questioning to Mr. Keenan keyed in on a couple of key

1 points, which is I think given their, to my mind, fairly  
2 obvious tension, this is *Hylton* and *Taylor's* obvious tension  
3 with *Gorman* and *Rodriguez*, one should read them fairly  
4 narrowly. But, of course, you know, we can't we do much about  
5 the tension between those cases in this room. We have to  
6 somehow find a way to thread the needle. And I think that the  
7 easiest way to thread the needle with *Hylton* and *Taylor* are  
8 basically that *Hylton* and *Taylor* say you can run criminal  
9 history checks when those criminal history checks are routine  
10 in basically two ways. One, they're routine in the sense that  
11 they are run as part of a routine, as in something that you  
12 commonly do, à la a driver's license check or a registration  
13 check. If you're doing it as a routine, I think that's one  
14 category of one sort of checkmark that you need to get into  
15 *Hylton* and *Taylor*. And then the second form of routine is  
16 that it has to be non-particularized. So you can't run it  
17 because you're doing an investigation into this person in  
18 particular.

19 And, of course, as the testimony here I think made  
20 fairly clear, fails on both of these checkboxes. Trooper  
21 Boyer was quite explicit in response to the Court's  
22 questioning that he does not run this as part of routine.  
23 It's not his practice to do it. Doesn't run criminal history  
24 checks every time he performs a stop.

25 And then, two, that he ran the criminal history

1 check for a particularized reason, that is, to investigate  
2 Mr. Steinman.

3 Naturally, I mean, there may be other ways to thread  
4 the *Hylton* and *Taylor* analysis, but given the facts of *Hylton*  
5 and *Taylor* and the sorts of checks at issue in *Evans* and  
6 *Gorman*, which I think the Court keyed in on --

7 THE COURT: Isn't there also an aspect how  
8 burdensome of a criminal history check we're talking about?  
9 Because at least factually in *Hylton* and *Taylor* this is a,  
10 like, a two-minute thing.

11 MR. MCCLELLAND: I think that's correct. Yeah, I  
12 think there is a negligently burdensome element to this. And  
13 in *Hylton* and *Taylor* we have, as the Court said, very, very  
14 brief criminal history checks. And I think the government  
15 highlighted *Taylor* involving sort of a follow-on check later  
16 in the stop. But I think it's worth noting that the facts in  
17 *Taylor* involve what I think is best described as a routine  
18 criminal history check as part of the other sort of routine  
19 checks at the outset. Wherein, if I'm remembering the facts  
20 of *Taylor* correctly, the officer asks Mr. Taylor whether he  
21 has a criminal history very early on in the stop.

22 I think in many ways the points with respect to  
23 *Gorman* and *Evans* and the sorts of checks that are run there, I  
24 mean, it's really hard to differentiate the sorts of checks  
25 and the information that those checks would provide with the

1 sort of detailed criminal history investigation that Mr. -- or  
2 that Trooper Boyer spends a substantial amount of time on;  
3 namely, the checks at issue in *Gorman* and *Evans*, right, they  
4 might not be garden variety criminal history checks, but they  
5 still reveal stuff about officer safety, presumably. And the  
6 Ninth Circuit still says, nope, that's outside the mission of  
7 a traffic stop.

8           Going to another series of points that the  
9 government identified. I think the government took issue with  
10 the citation to *Nora*, which is the, you know, one gun does not  
11 imply multiple guns case. Naturally we're dealing with  
12 different sorts of implication drawing here. We're dealing  
13 with, at bottom, an implication of ammunition implying guns.  
14 That's somewhat different, I guess, than gun implies guns.  
15 But in many ways, I think that difference inures to our  
16 benefit in the sense that if you have one gun, it's  
17 conceivable that there's multiple. But *Nora* forecloses that  
18 kind of reasoning. If you have ammunition, you have  
19 ammunition. Doesn't necessarily mean that you have a gun in  
20 the car. And Trooper Boyer testified to that too.

21           If the Court doesn't have any additional questions,  
22 we would ask that the Court suppress evidence collected in and  
23 during and as a result of this stop.

24           THE COURT: Okay. I have no further questions on  
25 the motion to suppress.

1 Do you want to have argument on the motion to  
2 dismiss?

3 MR. MCCLELLAND: Mindful that we are quite late on  
4 Friday, I do have thoughts on the motion to dismiss, but --

5 THE COURT: I mean, I can tell you that one of the  
6 first things that the government cited on the motion to  
7 dismiss was my earlier opinion in *Mosz*. I'm not sure -- I  
8 understand this is an evolving legal issue, and I take it  
9 seriously, but I'm also not inclined at this point to divert  
10 from what I said in *Mosz*. So I don't know that an argument is  
11 fruitful on this. I'm inclined to deny.

12 MR. MCCLELLAND: Understood, Your Honor. In that  
13 case, we'll let everyone get on with their Fridays.

14 THE COURT: So, I guess I'm wondering should we take  
15 a break? Let's take a break.

16 If you could stick around for a little bit, and it  
17 might be a little bit, like 20 minutes plus or so, while I  
18 change my travel reservations, and then deliberate a little  
19 bit, I would appreciate that. So we'll be in recess. Thank  
20 you so much for sticking around.

21 (Break taken 6:01 p.m. to 7:14 p.m.)

22 THE CLERK: This is to reflect that we're back on  
23 record in Case No. 3:22-cr-00068-ART-CLB.

24 THE COURT: Okay. So just going back to where we  
25 left off, I'm going to deny the motion to dismiss. I had said

1 that, but just to be clear.

2 And then I'm going to grant the motion to suppress  
3 and suppress the evidence found in the vehicle. I'm going to  
4 make an oral ruling.

5 So, a traffic stop is permissible if the police have  
6 reasonable suspicion that the traffic stop violation occurred.  
7 *United States v. Willis*, 431 F.3d 709, Ninth Circuit 2005.

8 There is sufficient basis here of speeding based on  
9 Mr. Steinman's admissions alone, but also based on Officer  
10 Boyer's testimony and the evidence submitted on that point. I  
11 understand the defense's position that there may have been  
12 inconsistencies in his testimony and what he represented when  
13 he approached and spoke to Mr. Steinman, but I do find that it  
14 does appear that Mr. Steinman was speeding, he admitted as  
15 much, and that there was a lawful stop of the car.

16 Whether the duration of a traffic stop is reasonable  
17 is determined by the seizure's mission to address the traffic  
18 violation that warranted the stop and attend to related safety  
19 concerns. That comes from *Rodriguez v. United States*, 575  
20 U.S. 348 at 354 from 2015. And authority for the seizure ends  
21 when the tasks tied to the traffic infraction are reasonably  
22 should have been completed.

23 Here, the traffic stop was unreasonably prolonged  
24 when Mr. Steinman was removed from his vehicle for the purpose  
25 of interrogation. As Officer Boyer testified, he didn't frisk

1 Steinman. And officers, of course, can remove individuals  
2 from their cars during stops. And here we have an officer who  
3 admittedly did so not for the purpose of officer safety, but  
4 as he testified, in order to conduct an investigation and to  
5 question Mr. Steinman in his car. And so there was nothing  
6 objectively reasonable about that decision, and it also  
7 interfered with the completion of the traffic citation or  
8 traffic mission.

9 The seizure was further unreasonably prolonged by  
10 the detailed questioning of Mr. Steinman, which, again,  
11 distracted from Trooper Boyer's ability to actually verify his  
12 information and complete and then issue the citation.

13 I understand that subjective motivations of the  
14 officer are irrelevant, but not only was Officer Boyer not  
15 motivated by his personal safety concerns, it would have been  
16 unreasonable and somewhat odd to put someone who's, for -- if  
17 you were fearful for your own safety, to put them unrestrained  
18 in the front seat of a police car and then to question them  
19 extensively about their criminal history for purposes of  
20 officer safety.

21 He -- Officer Boyer admitted that he put  
22 Mr. Steinman in the car because he wanted to question him, and  
23 that was the reason, and to engage in this unrelated  
24 investigation based on the fact that he had seen the  
25 ammunition in the car.



1           The process of issuing the citation was slowed down  
2 significantly by the questioning and by the criminal history  
3 checks which together took a long time.

4           Let me just get into a little bit more detail on the  
5 criminal history checks because there is an initial question  
6 is whether some criminal history check is allowed as part of a  
7 traffic stop. If the first criminal history check -- so --  
8 and the government cites to two cases, *Hylton* and *Taylor*,  
9 suggesting that at least that initial criminal history check  
10 was a routine or allowable portion of a traffic stop in the  
11 name of officer safety. I don't agree with that. On the  
12 facts of this case, I don't believe that that was the basis  
13 for the criminal history check on the factual basis that we  
14 have here. But I still find -- what I find unreasonable is  
15 the slow playing of the citation process, and that slow  
16 playing started earlier and then it lasted really, you know,  
17 90 minutes.

18           That first criminal history check was not routine.  
19 Officer -- I mean, Trooper, excuse me, Trooper Boyer testified  
20 that it was not routine. And in light of that, it does appear  
21 that this case is controlled not by *Hylton* but by *Rodriguez*  
22 and *Gorman*.

23           Even if that initial criminal history check was  
24 permissible, I'm still left with the fact that Trooper Boyer  
25 is prolonging the whole process of the traffic mission through

1 his interrogation and research on his criminal history. And  
2 so -- and it was after the first criminal history check,  
3 assuming that that was permissible, it was after that initial  
4 criminal history check that Mr. Steinman was interrogated  
5 about his -- whether he was a felon and about the box of  
6 ammunition. So even if the criminal history check stays, the  
7 prolongation immediately after is a problem.

8           There's no blanket prohibition on looking for  
9 evidence of other crimes during a traffic stop, but such  
10 inquiries may not measurably extend the duration of a stop  
11 unless the officer has a reasonable suspicion ordinarily  
12 demanded to justify detaining an individual. The Ninth  
13 Circuit has specified that non-routine record checks and dog  
14 sniffs are paradigm examples of unrelated investigations that  
15 may not be performed if they prolong a roadside detention  
16 absent independent reasonable suspicion. That's from *United*  
17 *States v. Gorman*, 859 F.3d 715.

18           The concept of reasonable suspicion, and as I said  
19 earlier, we know that Trooper Boyer is suspicious from the  
20 very beginning, so I need to examine whether there was  
21 reasonable suspicion here. The concept of reasonable  
22 suspicion like probable cause is not readily or even usefully  
23 reduced to a neat set of legal rules. The standard is lower  
24 than probable cause but nonetheless requires an objective  
25 articulable justification and it must be more than a hunch.

1 Reasonable suspicion exists when an officer is aware of  
2 specific articulable facts that when considered with objective  
3 and reasonable inferences form a basis for a particularized  
4 suspicion.

5 Particularized suspicion has two elements. The  
6 assessment must be based on the totality of the circumstances.  
7 And two, the assessment must arouse a reasonable suspicion  
8 that the particular person being stopped has committed or is  
9 about to commit a crime. Based on the totality of the  
10 circumstances, I do not see reasonable suspicion here.

11 There's not reasonable suspicion for a firearm, and  
12 there's certainly not reasonable suspicion for any of the  
13 other items in the warrant. Mr. Steinman is stopped in Wells,  
14 Nevada, in August. There's earlier testimony from Trooper  
15 Boyer that it was 90 degrees that day, and he -- Mr. Steinman  
16 reported that he'd been driving since -- all day. And there  
17 is nothing outside the norm of his behavior. There's some  
18 degree of nervousness or discomfort which is normal in the  
19 context of being pulled over by a police officer and ordered  
20 out of a police car. And I think we're left -- what we're  
21 left with here is that there was a box of ammunition which is  
22 legal to possess in Nevada, even for a felon. And I find that  
23 a box of ammunition in the vehicle of an individual who's  
24 clearly moving is not sufficient to support reasonable  
25 suspicion of a firearm being in the vehicle.

1           The cases the government cites are distinguishable  
2 with respect to ammunition because in those cases the  
3 ammunition was on the body of a person suggesting a much  
4 greater likelihood of the firearm having recently been used or  
5 possibly being -- and thus possibly being in close proximity.

6           It is hard to say exactly where the mission of the  
7 traffic stop should have been completed because there was this  
8 long prolongation during the course of issuing the citation.  
9 And Trooper Boyer testified, it normally takes 15 minutes. We  
10 are, even with some irregularities regarding information  
11 provided by the driver, it seems that that was exceeded --  
12 well-exceeded here early on when Trooper Boyer got all of the  
13 information. And it's clear that he slow played the time it  
14 took to safely investigate the traffic citation and asked  
15 questions and conducted an investigation that added time to  
16 the stop.

17           When he had all of the information that he needed to  
18 issue a citation, which was not that many minutes into the  
19 stop, and maybe around the 15-minute mark or just a minute or  
20 so after, he didn't issue the citation. And so then the sort  
21 of waiting for the ticket to fall is sort of happens over a  
22 long period of the remaining time until 90 minutes when the  
23 paperwork is ultimately returned.

24           After Officer Boyer signed off on the citation and  
25 scanned the barcode of the driver's license, confirmed the

1 registration was valid, finished the tasks associated with the  
2 citation, the remainder of the detention was even more  
3 untethered to the original possible traffic mission and the  
4 tasks associated with that, including an officer safety  
5 justification.

6 The interrogation following that first criminal  
7 history check regarding whether Mr. Steinman had been in  
8 trouble, by then Officer Boyer was already aware of his  
9 criminal history and it was that interrogation or questioning  
10 was clearly untethered to the mission of the traffic stop.

11 Also, the second more in depth criminal history  
12 investigation and questioning confirming the dispositions of  
13 criminal history entries was clearly unrelated to the mission  
14 of the stop and was non routine and was not justified by  
15 reasonable suspicion.

16 The Court cannot find that reasonable suspicion  
17 justified any prolongation of the stop. And reluctance to sit  
18 in a police vehicle and some degree of nervousness alone carry  
19 little weight because encounters with police officers are  
20 necessarily stressful for all individuals whether --  
21 regardless of their criminal history.

22 The weight of authority supports the defense's  
23 position that the state court officers cannot justify the  
24 search or the prolongation by relying on the proposition that  
25 they could have been enforcing an exclusively federal law.

1 Officer Boyer's own testimony makes that point very clear  
2 about what he understood the law to be, while his own personal  
3 perspective is -- that's not a subjective perspective, it is a  
4 reflection of how well this fact is known in Nevada that they  
5 understand their mission and the bounds of their job because  
6 he is only tasked with enforcing Nevada law.

7 The two district courts that have considered the  
8 issue have found that state officers' post hoc justification  
9 that federal law supported probable cause are insufficient  
10 when the conduct at issue is lawful under state law.

11 The Ninth Circuit has previously held that local  
12 police officers did not have probable cause based on alleged  
13 violations of federal law when the officers were at the time  
14 investigating a violation of state law. And that comes from  
15 United States versus -- what we call currency -- \$186,416 in  
16 U.S. Currency, 590 F.3d 942, Ninth Circuit 2010.

17 Two district courts have considered similar issues  
18 and found that post hoc justifications that federal law  
19 supported probable cause are insufficient when the conduct is  
20 lawful under state law. Those cases, which we've discussed  
21 today, are *Tally* and *Jones*. *Tally* is at 467 F. Supp 3d at  
22 836, and that's out of the Northern District of California  
23 2020. And in *Tally*, the Court held that the officers could  
24 not rely on a container of marijuana to believe that the  
25 vehicle contained contraband when marijuana is legal under

1 state law but not federal law.

2 And in *Jones, U.S. v. Jones*, which is 438 F. Supp 3d  
3 1038, Northern District of California 2020, the officers could  
4 not rely on the smell of marijuana to provide reasonable  
5 suspicion of probable cause when marijuana is legal under  
6 state law but illegal under federal law.

7 Nevada law does not authorize Trooper Boyer to  
8 enforce federal law to seize property for a punitive violation  
9 of federal law. State officers must be authorized to do so by  
10 state law. And that's under *Kerr v. California*, 374 U.S. 23,  
11 1963, stating, "The lawfulness of arrest for federal offenses  
12 is to be determined by reference to state law."

13 There was no probable cause to seize the vehicle.  
14 Even assuming there was no unlawful prolongation, nothing in  
15 the testimony or evidence that I heard or reviewed gave  
16 Officer Boyer sufficient information to rise to the level of  
17 probable cause. So that is to say, even assuming that he had  
18 the reasonable suspicion at the beginning or at some point he  
19 eventually got reasonable suspicion, he never sort of turned  
20 the corner to have enough for probable cause.

21 The seizure of his vehicle was based on his hunch  
22 that because he had ammunition and was nervous and a felon, he  
23 would also have a gun.

24 The warrant is also problematic for a couple of  
25 reasons. The exclusionary rule has traditionally barred from

1 trial physical, tangible materials obtained either during or  
2 as a direct result of a constitutional violation, and the  
3 exclusionary rules applies to warrants obtained through  
4 reliance on illegally acquired facts. Steinman's felony  
5 status is only disclosed during the first records check. If  
6 that was unlawful, there was no probable cause because the  
7 criminal history was necessary to get to the probable cause.  
8 Even if that initial records check was lawful and the  
9 prolongation only started after that, then there is still a  
10 problem because of the further questioning about his criminal  
11 history and what Trooper Boyer perceived as incorrect or  
12 misleading answers. So that particularly goes to paragraphs  
13 12 and 13 of the search warrant because those paragraphs  
14 describe Steinman's responses that Trooper Boyer perceived as  
15 deceptive and suspicious. And those representations in the  
16 search warrant bolstered his statement of probable cause.

17 The Court further agrees that defendant -- with the  
18 defendant that the search warrant was impermissibly overbroad  
19 in violation of constitutional safeguards.

20 In determining whether a description is sufficiently  
21 precise, the Ninth Circuit has concentrated on several  
22 factors. One, whether probable cause existed to seize all  
23 items of a category described in the warrant; whether the  
24 warrant provided objective standards by which executing  
25 officers could differentiate items subject to seizure from



1 those which were not subject to seizure; and three, whether  
2 the government could have described the items more  
3 particularly. And that's coming from *United States v.*  
4 *Spilotro*, 800 F.2d 959, Ninth Circuit, 1986.

5 The government concedes that there was no probable  
6 cause to seize controlled substances, paraphernalia, and  
7 stolen items. Particularly with respect to the stolen items,  
8 there was no objective standard by which executing officers  
9 could differentiate which items were stolen and which were not  
10 stolen. And courts have expressed particular concern with  
11 respect to the category of stolen items because it's hard for  
12 officers to know because, unlike contraband, their illicit  
13 nature is not apparent but must be indicated by other ways to  
14 show that it's stolen or because it matches a description of  
15 something that is stolen. And none of that exists here,  
16 obviously.

17 The government also could have described items with  
18 more particularity. For example, if there are drugs at issue,  
19 what drugs are suspected to be at issue. They could have been  
20 named.

21 I do not find that the warrant established probable  
22 cause for the seizure of firearms. But even assuming it did,  
23 most categories of the warrant were overbroad. And the normal  
24 remedy for an overbroad warrant is to sever, but severance  
25 does not apply here because the severance or partial

1 suppression -- because when the valid portion of the warrant  
2 is a relatively insignificant part of an otherwise invalid  
3 search. And that's said in *United States v. SDI Future*  
4 *Health*, 568 F.3d 707, Ninth Circuit, 2009.

5 Because the warrant in this case was facially  
6 invalid, no reasonable agent could have relied on it.

7 This case has some complications, when we combined  
8 in terms of a remedy, when we combined the overbreadth issue  
9 with the unconstitutionally obtained information based on the  
10 prolonged interview, we have sort of a situation where some  
11 portions of the warrant are -- should be excised based on  
12 severance, other portions of the warrant -- of what remains  
13 should be redacted or excised based on the constitutional --  
14 based on the prolongation violation. And it's -- as a result,  
15 there's really not enough to save a warrant. And it would be  
16 also extremely difficult, perhaps impossible, to know what's  
17 left of the warrant if you were actually tasked with executing  
18 this warrant, either hypothetically or, you know, in real  
19 life.

20 So to be clear, I am suppressing on multiple  
21 independent grounds. There was a prolonged detention  
22 unsupported by reasonable suspicion that far exceeded the  
23 scope of a normal traffic stop and mission. There was no  
24 probable cause to seize the vehicle. The warrant is invalid  
25 and cannot be saved by severance or good faith. I'm not going

1 to -- based on those rulings, I find it unnecessary to reach  
2 the *Miranda* issue.

3 So, with that, I am very, very grateful for  
4 everyone's courtesy and patience in working very late on a  
5 Friday night. And so, with that, if there's anything else for  
6 me to address, let me know. Otherwise, we'll be in recess.

7 MR. MCCLELLAND: Thank you.

8 MR. KEENAN: Thank you, Your Honor.

9 MR. MCCLELLAND: Nothing further from us.

10 (Proceedings concluded at 7:35 p.m.)  
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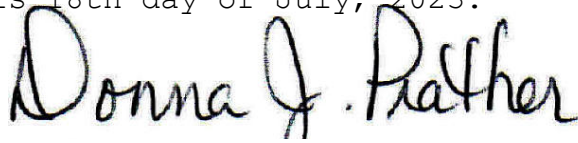
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**REPORTER'S CERTIFICATE**

I, DONNA J. PRATHER, do hereby certify that the  
above and foregoing, consisting of the preceding 164 pages,  
constitutes a true and accurate transcript of my stenographic  
notes and is a full, true, and complete transcript of the  
proceedings to the best of my ability.

Dated this 18th day of July, 2023.

A handwritten signature in black ink that reads "Donna J. Prather". The signature is written in a cursive, flowing style.

DONNA J. PRATHER, RMR, CRR, CCP, CBC  
Federal Official Court Reporter